

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 89200Specific Purpose/Factual Basis:

Section 89200 is amended to make the word "law" plural by adding an "s." Section 89200(b) is amended to move "Chapter 1" to appear after "General Licensing Requirements" and move "Chapter 9.5" to appear after "Foster Family Homes" for clarity and consistency. The amended regulations meets the "clarity" standard of the Administrative Procedure Act (APA), section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Section 89201, et seq. (Definitions)Specific Purpose:

Definitions are adopted for the following terms: "Age-Appropriate," "Alternative Caregiver," "Gender Identity," "Health and Education Passport," "Inconclusive," "Medical Assessment," "Occasional Short-Term Babysitter," "Personal Property," "Postural Support," "Pre-Placement Questionnaire," "Protective Devices," "Prudent Parent," "Self Administer," "Shared Responsibility Plan," "Substantiated," "Unfounded," "Whole Family Foster Home," and "Written Plan Identifying the Specific Needs and Services of the Child."

Existing definitions for "Adult," "Applicant," "Approval Agency," "Approved Home," "Authorized Representative," "Basic Rate," "California Department of Justice Clearance," "Capacity," "Care and Supervision," "Caregiver," "Caregiver's Family," "Cash Resources," "Child," "Child Abuse Central Index," "Child Abuse Central Index (CACI) Clearance," "Child with Special Health Care Needs," "Completed Application," "Conservator," "Control of Property," "Conviction," "Criminal Record Clearance," "Deficiency," "Department," "Director," "Disability," "Documented Alternative Plan," "Evaluator," "Exception," "Exemption," "Family Health Care," "Federal Bureau of Investigation (FBI) Clearance," "Foster Family Home," "Guardian," "Health Care Professional," "Home," "Independent Living Program (ILP)," "Individualized Health Care Plan," "Individualized Health Care Plan Team," "Infant," "Licensing Agency," "Licensed Home," "Medical Conditions That Require Specialized In-Home Health Care," "Medical Professional," "Nonrelative Extended Family Member," "Nonambulatory Person," "Physical Restraining Device," "Physician," "PRN Medication," "Rehabilitation," "Relative," "Sexual Orientation," "Social Worker," "Specialized Foster Family Home," "Specialized In-Home Health Care," "SSI/SSP," "Transitional Independent Living Plan (TILP)," "Unlicensed Community Care Facility," "Volunteer," and "Waiver" are amended for clarity.

Existing definitions for "Basic Services" and "Needs and Services Plan" are repealed for clarity.

Factual Basis:

Definitions are adopted or amended in Section 89200, et seq. based on the Legislative intent specified in Senate Bill (SB) 1641 (Chapter 388, Statutes of 2006), to normalize the lives and to promote the well being of children in foster care. SB 1641 also authorizes the California Department of Social Services (CDSS) to promulgate regulations for licensed caregivers who operate Foster Family Homes (FFH) as well as approved relatives and approved non-relative extended family members (NREFMs) who provide foster care.

The adoption or amendment of definitions is further authorized by Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001), which mandates California's continued compliance with the 1997 federal Adoption and Safe Families Act [(ASFA), Public Law (P.L.) 105-89, 42 U.S.C. 1305]. California's relative and NREFM caregiver approval process must employ the same core health and safety standards used to license FFH, a requirement added to statute in sections 309 and 362.7 of the Welfare and Institutions Code. Compliance with AB 1695, and ultimately, ASFA, is necessary for any licensed or approved home to receive federal Title IV-E funds for a "child."

Definitions in this section are also adopted or amended as a result of comment by the Children's Residential Regulations Review Workgroup (CRRRW), comprised of experts in the field, including advocates, county child welfare staff, current and former foster youth, foster parents, foster parent associations, and CDSS representatives. The CRRRW commented that overall changes to definitions are necessary to comply with updates to statute, make definitions more concise for ease of use and avoid any confusion that providers, licensing staff, or interested individuals may have related to the terms used throughout the regulations.

The definitions for "Age Appropriate" and "Self Administer" are adopted. The definition for "Care and Supervision" is amended consistent with section 11460, subsection (b) of the Welfare and Institutions Code to clarify the degree of care and supervision required for a "child." These definitions are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

The definitions for "Alternative Caregiver" and "Occasional Short-Term Babysitter" are adopted pursuant to the CDSS authority to promulgate regulations to implement section 362.04 of the Welfare and Institutions Code and clarify the types of caregiving that the caregiver may arrange for in his or her absence. The alternative caregiver definition is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least

restrictive and most family-like environment; and the caregiver use a reasonable and prudent parent standard pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641. The "Occasional Short-Term Babysitter" definition is consistent with section 362.04 of the Welfare and Institutions Code, added to statute by SB 358 (Chapter 628, Statutes of 2005), which permits a caregiver to use occasional short term babysitters.

The definition for "Gender Identity" is adopted as the result of comment by organizations representing gay and lesbian foster parents and youth, including the National Center for Lesbian Rights (NCLR), a member of the CRRRW. This definition has been obtained from and is consistent with the Child Welfare League of America Best Practice Guidelines for Serving Lesbian, Gay, Bisexual, Transgender (LGBT) Youth in Out-of-Home Care.

The definitions for "Health and Education Passport," "Medical Assessment," "Pre-Placement Questionnaire," and "Written Plan Identifying the Specific Needs and Services of the Child in Care" are adopted consistent with statute and to clarify documents that are sources of information about a "child." The "Health and Education Passport" definition is consistent with section 16010 of the Welfare and Institutions Code, which specifies that when a child is placed in foster care, a summary of the child's health and education information must be maintained. The "Pre-Placement Questionnaire" definition is necessary as a result of CRRRW comment that a caregiver may not always receive required documents that provide information about a "child" at placement and provides for the caregiver to ask questions about a "child." The definition for "Written Plan Identifying the Specific Needs and Services of the Child in Care" is similarly necessary because the CRRRW reports that a caregiver may receive a nonspecific document that provides information about a "child."

The definitions for "Inconclusive," "Substantiated," and "Unfounded" are adopted pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. These definitions are also adopted as a result of CRRRW comment that it is necessary to clarify how complaints about a caregiver may be evaluated.

The definition for "Personal Property" is adopted pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. This definition is necessary to define "Personal Property" as an item that the caregiver is required to safeguard pursuant to Section 89226, Safeguards for Cash Resources, Personal Property, and Valuables. "Cash Resources" addressed by this section is defined in existing regulations and it is necessary to also define "Personal Property."

The definitions for "Postural Support" and "Protective Devices" are adopted and the definition for "Physical Restraining Device" is amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. These definitions are necessary to clarify items addressed in regulation in Section 89475.2, Postural Supports and Protective Devices.

The definition for "Prudent Parent" is adopted pursuant to the CDSS authority to promulgate regulations to implement statute and is consistent with sections 362.04 and

362.05 of the Welfare and Institutions Code. These statutes permit a caregiver to use occasional short-term babysitters and entitle a "child" to participate in age-appropriate extracurricular, enrichment, and social activities.

The definition for "Shared Responsibility Plan" is adopted pursuant to the CDSS authority to promulgate regulations to implement statute and is consistent with section 16501.25 of the Welfare and Institutions Code. This statute specifies that this plan be developed for the care and supervision of a child of a teen parent in foster care.

The definition for "Whole Family Foster Home (WFFH)" is adopted pursuant to the CDSS authority to promulgate regulations to implement statute and is consistent with section 11400 of the Welfare and Institutions Code, amended in statute by SB 500. This statute defines this type of FFH.

The definitions for "Adult" and "Child" are amended consistent with statute and clarify the conditions that permit a "child" to remain in foster care past the age at which he or she would be considered an "adult." The amended definitions are consistent with sections 11403 and 17710 of the Welfare and Institutions Code, which specify that a "child" may remain in foster care past 18 if he or she is participating in education or training or has special health care needs.

The definition for "Child" is further amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It is necessary to amend this definition because there has been no previous definition for "foster child" in regulations. The amended definition clarifies that regulations apply to a "child" who has been placed in a licensed or approved caregiver's home by a person or agency responsible for placing a child and not other children in a caregiver's home, unless otherwise specified in regulations. The use of the term "child" is consistent throughout regulations for purposes of clarity and ease of use.

The definitions for "Applicant," "Control of Property," and "Foster Family Home" are amended consistent with statute to clarify that a caregiver may be licensed or approved, and that required documents may be provided for licensure or approval. These amended definitions are consistent with the CDSS authority to promulgate regulations for licensed caregivers who operate FFHs as well as approved relatives and approved non-relative extended family members (NREFMs) who provide foster care, pursuant to section 361.2 of the Welfare and Institutions Code.

The definition for "Authorized Representative" is amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The definition is amended as a result of CRRRW comment that the attorney for the "child" would qualify as an authorized representative and that it is necessary to include this attorney in the definition.

The definition for "Basic Rate" is amended consistent with statute and clarifies that a licensed or approved FFH does not charge to, but is paid for, providing care and supervision to, a "child" and that this payment is made by Aid to Families with Dependent Children-Foster Care (AFDC-FC) consistent with section 11461 of the Welfare and Institutions Code.

This statute provides the schedule of monthly rates to be paid to a licensed or approved caregiver based on the capacity of the home.

The definition for "Capacity" is amended consistent with statute and clarifies that a FFH is not authorized, but is licensed, to provide care and supervision to a specified number of children. CDSS is authorized to license a FFH for a specified capacity of children. FFHs may care for a capacity of up to six children in accordance with sections 1502, subsection (a)(5) of the Health and Safety Code and eight children in accordance with section 1505.2 of the Health and Safety Code.

The existing definitions for "Completed Application" and "Criminal Record Clearance" are amended to be consistent with statute and clarifies that the applicable statute is section 1522, subsection (d)(4)(D) of the Health and Safety Code.

The definitions for "Exception" and "Exemption" are amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. These definitions are amended for clarity and nonduplication, to remove regulatory language from definitions and avoid "regulation by definitions."

The definition for "Guardian" is amended consistent with statute and clarifies that a guardian may also be appointed pursuant to section 366.26 of the Welfare and Institutions Code. This statute is not included in the existing definition and provides additional provisions for appointing guardianship.

The definition for "Individualized Health Care Plan" is amended as a result of CRRRW comment that it is necessary to clarify that an individualized health care plan may also mean the hospital discharge plan for a "child." This reference to "hospital discharge plan" is consistent with statute in section 17731 of the Welfare and Institutions Code.

The definition for "Individualized Health Care Plan Team" and "Licensed Home" are amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The definitions are amended for clarity and nonduplication, to remove regulatory language from the definitions to avoid "regulating by definitions."

The definition for "Medical Conditions That Require Specialized In-Home Health Care" is amended consistent with statute to clarify that a caregiver must be trained to provide care for certain medical conditions. The amended definition is consistent with section 17710, subsection (g) of the Welfare and Institutions Code, which specifies these medical conditions and requires that the caregiver be trained by health care professionals.

The definition for "Social Worker" is amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The amended definition further clarifies the role of the social worker in the foster care system.

The definition for "Transitional Independent Living Plan (TILP)" is amended consistent with statute and to clarify that in addition to programs and services, a "child" shall also

pursue activities that help him or her prepare for the future. The amended definition is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

The definition for "Unlicensed Community Care Facility" is amended pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. This definition is amended for clarity and nonduplication, to position regulation before handbook, renumber the section, and repeal duplicate regulatory language that appears in the existing subsection(C)(4).

The definition for "Basic Services" is repealed because this term is no longer in use. Statute in section 11460, subsection (a) of the Welfare and Institutions Code specifies that caregivers are paid a rate for the "care and supervision" of a "child."

The definition for "Needs and Services Plan" is repealed and replaced by the definition for "Written Plan Identifying the Specific Needs and Services of the Child." This amendment is intended to avoid any confusion that providers, licensing staff, or interested individuals may have because the needs and services of a "child" may be described in a variety of documents. The use of the term "written plan identifying the specific needs and services of the child" is consistent throughout regulations for purposes of clarity and ease of use.

The above definitions and remainder of the definitions found in this section have been amended for purposes of clarity. These definitions meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c), the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing, Sections 89201(a)(5) and (6); (b)(1); (c)(3), (5), (6)(E), (7)(A), (9), (11)(A) and (14)(B); (f)(1); (i)(2) and (4); (l)(2); (p)(2) and (8); (r)(2)(A), (2)(A)1., and (3); (s)(3); (t)(1); (u)(2)(A), and (B)(1)b. are amended for clarity and consistency. At the Department's discretion, additional non-substantive editorial, grammatical, and formatting changes are made for clarity and consistency.

Section 89202

Specific Purpose:

This section lists the different forms used in the regulations for this chapter. Some of these forms are specific to FFHs and others are used for this and other facility types. All of these forms are incorporated by reference and are not printed in the California Code of

Regulations (CCR) or CDSS' Manual of Policies and Procedures (MPP) because it would be cumbersome and impractical; however, they are available from the CDSS website.

Revision dates for the LIC 198A, 9182, and 9188 and PUB 396 listed in the section are updated. The listing of forms and publications in this section is amended to include LIC 195 (10/07) – Notice of Operation in Violation of Law, LIC 283 (11/08) – Foster Family Home Application, LIC 508D (12/07) – Out-Of-State Disclosure and Criminal Record Statement (Foster Family Homes, Small Family Homes, Certified Family Homes), LIC 973 (4/03) – Documented Alternative Plan, Foster Family Homes (Bedrooms), and LIC 974 (4/03) – Documented Alternative Plan, Foster Family Homes (Telephones), and the LIC 9225 (8/08) – Pre-Placement Questionnaire. The LIC 508 is repealed.

Factual Basis:

The LIC 198A, 9182 and 9188 have been amended to adopt a Privacy Statement to be consistent with the Federal Privacy Act (P.L. 93-579). The revision dates for these forms are consistent with more recent revision dates shown on the CCLD forms website. These criminal background check forms have gone through the rulemaking process for other facility types and are necessary for the FFH facility type.

The instructions at the top of the LIC 198A have been amended to provide clear direction for caregivers who are affected by this form. These changes are also consistent with section 1522.1 of the Health and Safety Code that explains who is required to have a Child Abuse Central Index (CACI) check.

The LIC 9182 was amended to repeal "Clearances cannot be transferred from a state licensed facility to a county licensed facility, or from county to state" consistent with statute in section 1522, subsection (h)(3) of the Health and Safety Code that allows a clearance to be transferred from county to state. New language, "This form may only be used to request a clearance transfer between state licensed facilities. To request a transfer between county and state licensed facilities, the requesting Licensing Agency must contact their county liaison" has been adopted for clarity.

The LIC 9188 was amended to repeal "Exemptions cannot be transferred from a state licensed facility to a county licensed facility or from county to state" consistent with section 1522, subsection (h)(3) of the Health and Safety Code. The LIC 9188 was also amended to repeal "a duty statement or job description; and a Criminal Record Statement (LIC 508). The LIC 508 must contain an explanation(s) of all convictions" because this information is in the original exemption file or it is not necessary to evaluate the transfer request. New language, "This form may only be used to request an exemption transfer between state licensed facilities. To request a transfer between county and state licensed facilities, the requesting Licensing Agency must contact their county liaison" has been adopted for clarity.

The PUB 396 revision date is consistent with the more recent revision date shown on the CCLD forms website. The PUB 396 has been amended to adopt a section title, "Being Treated Differently" and clarify that if a "child" feels he or she is being "harassed" or discriminated against on the basis of specified characteristics and "sexual orientation, ethnic

group, ancestry, national origin, gender identity, mental or physical disability or HIV status," he or she should contact the Foster Care Ombudsman for assistance. This amendment is consistent with statute in section 16001.9, subsection (a)(23) of the Welfare and Institutions Code. "Remember your rights" language has been relocated to immediately precede "Being Treated Differently" information for clarity.

The LIC 195 (10/07) – Notice of Operation in Violation of Law, LIC 283 (11/08) – Foster Family Home Application, LIC 508D (12/07) – Out-Of-State Disclosure and Criminal Record Statement (Foster Family Homes, Small Family Homes, Certified Family Homes), LIC 973 (4/03) – Documented Alternative Plan, Foster Family Homes (Bedrooms), LIC 974 (4/03) – Documented Alternative Plan, Foster Family Homes (Telephones), and the LIC 9225 (8/08) – Pre-Placement Questionnaire are consistent with reference to these forms in regulation. The LIC 195 has gone through the formal rulemaking process for other facility types. The LIC 283, 508D, 973, 974, and 9225 are adopted with these regulations. These forms are necessary because they apply to the FFH facility type.

The LIC 283 (11/08) – Foster Family Home Application is an application form for a prospective caregiver to complete that provides information to the licensing agency about their FFH. This application form captures information about the caregiver and their FFH that is consistent with the requirements of these regulations.

The LIC 508D (12/07) – Out-Of-State Disclosure and Criminal Record Statement (Foster Family Homes, Small Family Homes, Certified Family Homes) is consistent with sections 1522 and 1522.1 of the Health and Safety Code, which require a check of criminal records and child abuse registries from other states in addition to a check of federal records. The amendment adopting the LIC 508D is also the result of comment by the CRRRW that it is necessary to add this form to the list of forms and publications that are relevant to the FFH facility type.

The LIC 973 (4/03) – Documented Alternative Plan, Foster Family Homes (Bedrooms), LIC 974 (4/03) – Documented Alternative Plan, Foster Family Homes (Telephones) are forms for a licensed or approved caregiver to complete when requesting approval from the licensing or approval agency to use another, but equally protective, way of meeting the intent of regulations regarding bedrooms and telephones in Article 3. The use of these forms to request a Documented Alternative Plan (DAP) is consistent with the definition of a DAP in section 89201, Definitions.

The LIC 9225 (8/08) – Pre-Placement Questionnaire provides a means for a caregiver to ask the placement worker for critical information about a "child" in the event that the caregiver does not receive the Health and Education Passport for the "child" and the written plan identifying the specific needs and services of the "child" at the time of placement.

The LIC 508 is repealed. It is the incorrect Criminal Record Statement form for the FFH category.

Section 89205

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity and ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Section 89206(a)

Specific Purpose/Factual Basis:

This section is repealed for purposes of clarity and nonduplication with Section 89207, Exemption from Licensure. This regulatory language is repealed because it refers to exemption from licensure pursuant to Section 89207, Exemption from Licensure and section 1505 of the Health and Safety Code, referred to in subsection (a) of that section. It is also repealed because it refers to sections 1503.5 and 1508 of the Health and Safety Code, which are referred to in subsection (b), renumbered to subsection (a).

Section 89206(b) and Handbook

Specific Purpose/Factual Basis:

This section is renumbered to subsection (a) and amended to refer to "home" instead of "facility" for purposes of clarity and consistency. The remainder of the changes in subsection (a) are nonsubstantive and made for purposes of clarity and consistency. The remaining subsections are renumbered to accommodate the repeal of subsection (a).

The handbook section is added for ease of use by including the language of Health and Safety Code sections 1503.5, 1508, and 1533 referenced in the above subsection.

Section 89206(c)

Specific Purpose/Factual Basis:

This section is renumbered to subsection (b) and amended to capitalize the title of the form Notice of Operation in Violation of Law and add the form number (LIC 195) for purposes of clarity and consistency. The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It clarifies that the Notice of Operation in Violation of Law is a CDSS CCLD form used to notify a person who is operating a FFH without a license that the home is being operated in violation of the law. The reference to this form in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category. The remainder of the changes in subsection (b) are nonsubstantive and made for purposes of clarity and consistency.

Sections 89206(d) and (d)(1)

Specific Purpose:

Section 89206(d) is renumbered to subsection (c) and amended to repeal reference to section 1547 of the Health and Safety Code for purposes of clarity and nonduplication. The handbook subsection (d)(1) which includes the language to Health and Safety Code section 1547 is deleted.

Factual Basis:

The statute in section 1547 of the Health and Safety Code specifies dollar amounts of civil penalties to be assessed and does not provide needed clarity to this section, which addresses what will happen if a home is found to be operating without a license. The reference to this statute also duplicates similar information about dollar amounts of civil penalties to be assessed for unlicensed operation, which are addressed in Section 89255, Unlicensed Facility Penalties. The remainder of the changes in subsection (c) are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Section 89206(d), renumbered to subsection (c), is amended to change "Unlicensed Facility Penalties" to "Penalties for Unlicensed Homes" in response to public comment to replace the term "facility" with "home" to promote normalization and provide clarity and consistency in the regulations through use of the term "home."

Section 89206(e)

Specific Purpose:

This section is renumbered to subsection (d) and amended to update referenced subsections from (c) and (d) to (b) and (c) and replace "shall" with "may" for purposes of clarity and consistency. The handbook section number is deleted and the language corrected to make them consistent with the rest of the chapter.

Factual Basis:

The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It is necessary to update the referenced subsections for clarity because regulatory language in subsection (a) has been repealed, resulting in the renumbering of the following regulations. The term "shall" is replaced by "may" to clarify that CDSS has the discretionary authority to take one or more of the actions referenced in renumbered subsections (b) and (c) when a home is found to be operating without a license. These actions depend on what is appropriate on a case-by-case basis. The use of "may" is also consistent with section 1549 of the Health and Safety Code referenced in regulation. The remainder of the changes in subsection (d) are nonsubstantive and made for purposes of clarity and consistency.

Sections 89206(f) and (f)(1)

Specific Purpose/ Factual Basis:

These subsections are renumbered to (e) and (e)(1) respectively; subsection (e)(1) is amended to refer to "children" instead of "clients" for purposes of clarity and consistency.

Section 89206(f)(2)

Specific Purpose:

This section is renumbered to subsection (e)(2) and amended to clarify that a home that does not submit an application within 15 calendar days of being served a Notice of Operation in Violation of Law (LIC 195) continues to be "unlicensed" and that an application for license must be submitted "to the licensing agency."

Factual Basis:

The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The Notice of Operation in Violation of Law is a CDSS CCLD form used to notify a person who is operating a FFH without a license that the home is being operated in violation of the law. The reference to this form in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category. The amended regulation is consistent with regulations in Sections 89254, Civil Penalties, and 89255, Unlicensed Facility Penalties, both which indicate the penalties that are assessed when a home does not submit an application for licensure.

Section 89207, et seq.

Specific Purpose/Factual Basis:

These sections are amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing, at the Department's discretion, Section 89207(a) is amended to include "homes" in addition to the existing "facilities and arrangements" for clarity and consistency with section 1505 of the Health and Safety Code, which specifies that some homes, for example, homes of relative caregivers, would be exempt from licensure. Also the handbook section is updated.

Section 89218(a)

Specific Purpose:

This section is amended to clarify that an applicant must submit a verified Foster Family Home Application (LIC 283) and to repeal specified language for purposes of clarity, consistency, and nonduplication.

Factual Basis:

The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The Foster Family Home Application is a CDSS CCLD form used to collect necessary information from a prospective caregiver. The reference to this form in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category. Regulatory language that refers to "forms furnished by the licensing agency" is repealed for clarity and consistent with comment by the Children's Residential Regulations Review Workgroup (CRRRW). The CRRRW is comprised of experts in the field, including advocates, county child welfare staff, current and former foster youth, foster parents, foster parent associations, and CDSS representatives. The CRRRW commented that it is necessary for the application process to be user-friendly. Repealing this regulatory language will avoid any confusion that prospective caregivers, licensing staff, or interested individuals may have about the application process. Regulatory language that refers to "verification and documentation" is repealed because it duplicates similar language that appears in subsection (b).

Sections 89218(c) through (c)(12)

Specific Purpose:

Section 89218(c) is amended to clarify that in addition to the Foster Family Home Application (LIC 283), an applicant must submit supporting documents that contain specified information. Subsections (c)(1), (c)(4), (c)(5), and (c)(12) are repealed to remove references to items included in the FFH application for purposes of clarity and nonduplication. Subsections (c)(7) and (c)(11) are repealed to remove duplicate references to section 1520 of the Health and Safety Code, subsections (e) and (g), which are referenced in the amended regulation in subsection (c)(3), for purposes of clarity and nonduplication. The remaining subsections are renumbered to accommodate the repeal of above-mentioned regulations.

Factual Basis:

The amendment and repeal of regulations in subsection (c) and (c)(1) through (12) is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The Foster Family Home Application is a CDSS CCLD form used to collect necessary information from a prospective caregiver. The reference to this form in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category. Some of

the information that the prospective caregiver must provide is supplemental to the Foster Family Home Application (LIC 283). Other information may be needed based on the prospective caregiver's circumstances, for example, the prospective caregiver rents the home that will be licensed as a FFH.

References to items included in the FFH application are repealed in subsections (c)(1), (c)(4), (c)(5), and (c)(12) for purposes of clarity consistent with revising the section to address supporting documents that are in addition to the Foster Family Home Application (LIC 283) and CRRRW comment. The CRRRW commented that it is necessary to remove items from regulation that are included in the application, for purposes of nonduplication.

The remainder of the changes in subsections (c) and (c)(1) through (12) are nonsubstantive and made for purposes of clarity, consistency, and nonduplication.

The handbook sections are included for ease of use by providing the language of Health and Safety Code sections 1520 and 1522.1 reference to in regulation.

Section 89218(d)

Specific Purpose/Factual Basis:

This regulation section is renumbered from Section 89231(b) for purposes of clarity and consistency. It is more appropriate to this section because it is a requirement that the applicant must fulfill at the time of the application for license. It requires the FFH applicant to provide an accurate and verified application, consistent with the requirements of this section. The remaining subsections are renumbered to accommodate the renumbering of this regulation.

Section 89218(d) through (f)

Specific Purpose/Factual Basis:

These regulations are renumbered to subsections (e) through (g) respectively and amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Sections 89219, 89219.1, and 89219.2, et seq.

Specific Purpose/Factual Basis:

Nonsubstantive amendments are made to regulations, and where applicable, handbook, in Sections 89219, 89219.1, and 89219.2, et seq. to meet the "clarity" and "consistency" standards of the APA, Government Code section 11349, subsections (c) and (d) and the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Sections 89219(b)(3) and (e)(1)(C) are amended to change the term "facility" to "home" in response to public comment to promote normalization and provide clarity and consistency in the regulations through use of the term "home."

Following the public hearing and at the Department's discretion, Section 89219(b)(7) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive changes are made.

Section 89219(b)(8)

Specific Purpose:

This regulation is adopted to specify that occasional short-term babysitters are also exempt from the requirement to obtain fingerprints for criminal record clearance. Current subsection (b)(8) is renumbered to accommodate addition of the new regulation.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation is adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) the Welfare and Institutions Code, added to statute by SB 1641.

This regulation is also adopted pursuant to the CDSS authority to promulgate regulations to implement statute. It clarifies that occasional short-term babysitters are exempt from criminal record clearance requirements, consistent with section 1522 of the Health and Safety Code, amended in statute by SB 358 (Chapter 628, Statutes of 2005) and section 362.04 of the Welfare and Institutions Code, added to statute in that legislation. Section 1522, subsection (b)(3)(C) of the Health and Safety Code specifies that individuals who are engaged by any licensed or certified foster parent to provide short-term care to a "child" for less than 24 hours are exempt from criminal record clearance requirements. Section 362.04 of the Welfare and Institutions Code permits a caregiver to use occasional short term babysitters. This regulation is consistent with referenced statute.

This regulation is additionally adopted as a result of comment by the CRRRW that it is necessary to add babysitters to the list of exempt persons, with a reference to the statute allowing occasional babysitting of children.

Sections 89219(c) and (d) and Handbook

Specific Purpose/Factual Basis:

These sections and handbook are amended to be consistent with statute and clarify that the applicable statute is section 1522, subsection (d)(4)(D) of the Health and Safety Code.

Section 89219(g)(9)

Specific Purpose/Factual Basis:

This handbook section is amended to be consistent with statute.

Section 89224 Title

Specific Purpose/Factual Basis:

This amendment changes the section title from "Waivers and Exceptions" to "Exceptions and Waivers" for clarity. It meets the "clarity" standard of the APA, Government Code section 11349, subsection (c).

Sections 89224(b) through (c)

Specific Purpose/Factual Basis:

These sections are amended by making nonsubstantive changes for purposes of clarity for ease of use and renumbered to accommodate the reorganization of regulations. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Section 89224(d) (Renumbered from 89224(c))

Specific Purpose:

This section is amended to refer to "licensing agency's" instead of "Department's," approval or denial of the "exception or waiver," and "in the home" instead of "in its facility" for purposes of clarity and consistency.

Factual Basis:

The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The reference to "licensing agency" indicates that CDSS and other agencies share licensing functions and is consistent with the definition for "Licensing Agency" in Section 89201, Definitions. The reference to "exception or waiver" clarifies the type of request that the licensing agency approves or denies for a caregiver, to avoid any confusion that caregivers

and licensing staff may have. A FFH is considered to be a "private residence" rather than a "facility" by statute. The reference to "home" is consistent with the definitions for "Foster Family Home (FFH)" and "Licensed Home" in Section 89201, Definitions. The remainder of the changes in subsection (d) are nonsubstantive and made for purposes of clarity and consistency.

Sections 89224(e) through (e)(2)

Specific Purpose:

These sections are adopted to specify what a Documented Alternative Plan (DAP) is, form numbers for the Documented Alternative Plan (LIC 973 and LIC 974), and how a Documented Alternative Plan may be applied, for purposes of clarity and consistency.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted to normalize the lives and to promote the well being of children in foster care. These regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

These regulations are consistent with broad CDSS authority to implement statute and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. Although exceptions and waivers are not allowed for any of the regulations in Article 3 of these regulations, which represent core health and safety standards for a FFH, a caregiver is permitted to request a DAP and provide an equally protective means of meeting bedrooms and telephones regulations in Article 3 of these regulations.

These regulations are additionally adopted as a result of comment by the CRRRW that it is necessary to clarify the DAP. The adopted regulations clarify the DAP, consistent with the definition of a DAP in Section 89201, Definitions.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89224(e) is amended to make an additional non-substantive grammatical change.

Sections 89226(a) and (a)(1)

Specific Purpose:

Subsection (a) is renumbered from subsection (b) and amended to clarify that the caregiver is required to make an itemized inventory list of cash resources, personal property, and

valuables that a "child" brings into care and review this list with the "child." Regulatory language "maintain accurate records of accounts of cash resources, personal property, and valuables entrusted to his/her care" in the new subsection (a) is repealed and adopted in subsection (b)(2) for purposes of clarity. Subsection (a)(1) is adopted to clarify that the caregiver is required to keep the itemized inventory list of cash resources, personal property, and valuables for a "child" in the records for the "child."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. These amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

These regulations are also amended and adopted as a result of comment by the CRRRW. The CRRRW commented that it is necessary for the caregiver to receive an itemized inventory of cash resources, personal property, and valuables that belong to a "child" from the placement social worker for the "child." Title 22, Division 6, Chapter 9.5, California Code of Regulations (CCR) regulations do not govern social workers and CDSS cannot ensure that such an inventory will be received from the placement social worker at the time of placement. Requiring the caregiver to make the inventory is necessary to safeguard the belongings of a "child," and protect the caregiver from potential liability. The amended and adopted regulations are consistent with section 89370, Children's Records in Article 3 of these regulations.

Sections 89226(b) through (b)(2)

Specific Purpose:

Subsection (b) is adopted to clarify that the caregiver is required to safeguard the cash resources, personal property, and valuables of a "child" in specified ways. Subsection (b)(1) is renumbered from subsection (a) and along with the adoption of subsection (b)(2), they specify the ways in which the caregiver is required to safeguard the cash resources, personal property, and valuables of a "child."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change is made to renumbered Section 89226(b)(2) for clarity and consistency.

Section 89226(c)

Specific Purpose:

This section is adopted to require the caregiver to allow the "child" to have age and developmentally appropriate access to and control of his or her cash resources, personal property, and valuables, for purposes of clarity and consistency.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation is adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the caregiver being permitted to maintain the least restrictive and most family-like environment that serves the day-to-day needs of the "child" and the "child" being permitted to engage in reasonable, age-appropriate day-to-day activities that promote the most family-like environment, as required by section 361.2, subsections (j)(1)(B) and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulation is also consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It is consistent with the right of a "child" to have their own personal items, as specified in Section 89372, Personal Rights, subsection (a)(2).

This regulation is additionally adopted as a result of comment by the CRRRW that it is necessary for the "child" to be given autonomy in access to their belongings, in accordance with their age and development. It clarifies that the caregiver is required to allow the "child" to access his or cash resources, personal property, and valuables. It is consistent with section 89372, Personal Rights in Article 3 of these regulations.

Sections 89226(d) through (d)(2)

Specific Purpose:

Subsection (d) is renumbered from subsection (c) and amended to clarify that the caregiver is required to surrender the cash resources, personal property, and valuables of a "child" and an itemized inventory list of these items to the "child" if age and developmentally appropriate. Subsection (d)(1) is adopted to require the caregiver to inspect the itemized inventory list with the "child" and the authorized representative for the "child." Subsection (d)(2) is renumbered from subsection (d)(1) and amended to clarify that the caregiver is required to request a signed receipt for surrendered items.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

These regulations are also amended and adopted as a result of comment by the CRRRW that it has been alleged that a caregiver did not surrender the personal property of a "child." It was suggested that it is necessary to require that the inventory list of items belonging to the "child" be inspected to ensure that all items are surrendered when the "child" leaves placement and that the caregiver request a receipt for the items that have been surrendered.

The remainder of the changes in subsections (d) through (d)(2) are nonsubstantive and made for purposes of clarity and consistency. These regulations are consistent with Section 89370, Children's Records in Article 3 of these regulations.

Final Modification:

In response to public comment, renumbered Section 89226(d) is amended to clarify that a caregiver can surrender the child's cash resources, personal property, and valuables to the placement agency or other authorized representative as well as the "child" if age and developmentally appropriate.

Sections 89227(a) through (a)(4) and Handbook

Specific Purpose/Factual Basis:

Subsections (a) through (a)(4) are adopted for consistency with section 1521.6 of the Health and Safety Code. This statute specifies that prospective FFHs must meet specified health and safety requirements and that a caregiver must be evaluated for their ability, readiness, and willingness to meet the varying needs of children. Regulations in subsection (a)(1)(B), (a)(2), and (a)(4) are also adopted based on sections 1521.5, 1520, 13131, and 13143 of the Health and Safety Code. Handbook subsections (a) through (a)(1)(D), with the exception of subsection (a)(1)(A)1., are deleted as they are adopted as regulations instead of handbook subsections. The remaining handbook has minor changes made for consistency.

Final Modification:

Following the public hearing and at the Department's discretion, Sections 89227(a)(2) through (a)(4) are reformatted for clarity and consistency.

Sections 89227(b) through (c)(4) and Handbook

Specific Purpose/Factual Basis:

These regulations have been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Section 89228(a)

Specific Purpose:

Nonsubstantive amendments are made to this section for clarity and consistency. The phrase, "which shall take into consideration the following:" is repealed from this subsection to be adopted as part of subsection (b) along with subsections (a)(1) through (4) to clarify and list the items that the licensing agency takes into consideration when determining the capacity of a home.

Factual Basis:

This regulation is amended consistent with broad CDSS authority to and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

Section 89228(a)(1)

Specific Purpose:

This regulation is adopted to clarify that effective January 1, 2010, the total number of children in a FFH shall not exceed six children, including foster, biological, adoptive, and guardianship children.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has is adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulation is also consistent with broad CDSS authority to implement statute and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It is consistent with existing statute in section 1502 of the Health and Safety Code, which specifies that a FFH provides care for six or fewer foster children and is the residence of the foster parent or parents, including their family. CDSS is adopting this regulation to safeguard the quality of care in FFH by ensuring that a caregiver

does not become overextended by caring for a large number of children. The regulation clarifies that the capacity of six children in the home is applied to new licenses.

This regulation is additionally adopted as a result of comment by the CRRRW. The CRRRW commented that it is necessary to clarify whether a caregiver's adoptive, biological, and guardianship children as well as "children" would be considered in determining FFH capacity. The adopted regulation permits a caregiver to have six "children" if they have no other children in the home, or fewer than six "children" if they have other children in the home.

Section 89228(a)(1)(A)

Specific Purpose:

This regulation is adopted to clarify that existing FFH with more than six children will be required to no longer accept placements until the number of children in the home does not exceed six, unless authorized by the licensing agency.

Factual Basis:

This adopted regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It is adopted to further clarify that existing FFHs are grandfathered if they have a greater capacity than a total of six children in the home, but are required to attrition down to the required capacity. The regulation will allow time for existing FFH to come into compliance with the capacity standard.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive grammatical change is made for clarity and consistency.

Section 89228(a)(2)

Specific Purpose:

This regulation is adopted to clarify that if it is determined that the FFH can meet the needs of all children in the home, the licensing or approval agency may grant a waiver or exception permitting the home to provide care for more than six children.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulation is also consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. CDSS could grant the waiver permitted by the adopted regulation to a caregiver who may be exceptionally able to care for a large number of children.

This regulation is additionally adopted as a result of comment by the CRRRW that it is necessary to clarify how a caregiver may receive an increase in capacity for his or her FFH. The adopted regulation clarifies that the capacity of six children in the home may be exceeded if a waiver is granted to allow more than six children in the home.

Section 89228(a)(3) and Handbook

Specific Purpose:

This regulation is adopted to clarify that if conditions are met, the licensing agency may authorize a FFH to care for up to eight children to accommodate a sibling group.

Factual Basis:

This regulation is adopted pursuant to CDSS authority to promulgate regulations to implement statute and for clarity. Section 1505.2 of the Health and Safety Code permits the licensing agency to authorize a FFH to provide care for up to eight children, to place a sibling group. Section 89420, subsection (b) specifies the fire clearance requirements for homes with a capacity of more than six children. The adopted regulation clarifies that, in addition to the granting of a waiver in subsection (a)(2), the capacity of six children in the home may be exceeded to accommodate siblings. It further clarifies that a sibling group includes, but is not limited to, biological, step-siblings, and half-siblings. The handbook section provides the language of Health and Safety Code section 1505.2 for ease of use.

Sections 89228(b) through (b)(5)

Specific Purpose:

The regulation in subsection (b) is adopted to clarify that the licensing agency shall take specified factors into consideration when determining the capacity of the home. Regulations in subsections (b)(1), (3), (4), and (5) are renumbered from subsections (a)(1) through (4) respectively and are amended for purposes of clarity. Regulation in subsection (b)(2) is adopted to clarify that the licensing agency shall also consider how many children, in addition to children already living in the home, the caregiver is capable of providing care and supervision to and the home can accommodate.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted and amended to normalize the lives and to promote the well being of children in foster care. The adopted and amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-

being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641. They are also consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

The adopted regulation in subsection (b)(2) clarifies that the number, as well as the needs, of children in the home is considered in capacity determination. It is consistent with new regulatory language in subsections (a)(1)(A) and (a)(2), which establish caps on the capacity of a FFH.

The remainder of the changes in subsections (b) and (b)(1) through (5) are nonsubstantive and made for purposes of clarity.

Section 89228(c)

Specific Purpose/Factual Basis:

This subsection is renumbered from subsection (b) and amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). It is consistent with the principles of "plain English" rule drafting.

Section 89228(d)

Specific Purpose:

This subsection is renumbered from subsection (c) and amended to clarify that capacity determination applies to the "applicant" for a FFH license and not the caregiver. Regulatory language in the existing subsections (d) through (d)(2) are renumbered to Article 4, Section 89410 for purposes of consistency.

Factual Basis:

The amended regulation is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It clarifies that the licensing agency makes a capacity determination as part of the FFH application process, in which the prospective caregiver is referred to as an "applicant." The remainder of the changes in subsection (d) are nonsubstantive and made for purposes of clarity and consistency.

Regulatory language in the existing subsections (d) through (d)(2) is more appropriate to Article 4, which addresses limitations on capacity rather than capacity determination.

Section 89228(e) and (e)(1) through (2)

Specific Purpose:

Subsection (e) is amended to clarify licensing agency authority to decrease the capacity of the home. Subsection (e)(1) is amended for purposes of clarity and consistency. Subsection (e)(2) is adopted to clarify that if the licensing agency initiates revocation action as specified in subsection (e)(1), the caregiver may request an administrative hearing.

Factual Basis:

This regulatory action is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

The regulation in subsection (e)(2) is adopted as a result of comment by the CRRRW. The CRRRW commented that it is necessary to clarify the appeal process for revocation action to make the existing regulation in subsection (e)(1) more user friendly. The adopted regulation clarifies the due process that is available to a caregiver when there is a disagreement about the capacity determination made by the licensing agency. The adopted regulation clarifies that an administrative hearing provides this appeal. This is consistent with CDSS Manual of Policies and Procedures, Division 22 regulations.

The remainder of the changes in subsections (e) and (e)(1) are nonsubstantive and made for purposes of clarity and consistency.

Handbook Section 89229(b)(1)

Specific Purpose/Factual Basis:

Nonsubstantive changes are made to this handbook section.

Section 89231(a)

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). It is also consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Section 89231(b) through (d)

Specific Purpose/Factual Basis:

The regulation in subsection (b) is renumbered to Section 89218, subsection (d) for purposes of clarity and consistency. Regulation in subsection (c) is renumbered to subsection (b) and amended to make nonsubstantive changes for purposes of clarity and consistency. Subsection (d) is renumbered for consistency.

Section 89231(e)

Specific Purpose:

This regulation section specifying that no limitation shall be imposed on the caregiver or printed on the license solely on the basis that the caregiver has or will continue to administer corporal punishment on his or her own children is repealed for purposes of clarity.

Factual Basis:

The repeal of this regulation section is necessary because it does not provide clarity to this section. The regulation is more appropriate to and as written in section 89240, Denial of a License, subsection (a)(3). The substance of this regulation appears in two separate sections of these regulations and this instance of the regulation is repealed to eliminate this duplication.

Section 89234(a)

Specific Purpose/Factual Basis:

This subsection is amended to repeal "including a change in location" because it is unnecessary and redundant with "a change in conditions or limitations described on the current license" included in the section. The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity and ease of use.

Section 89234(b) through (b)(3)

Specific Purpose:

Current Handbook Section 89234, subsections (b) through (b)(3) are deleted and parts of it adopted as regulation for purposes of clarity and consistency.

Factual Basis:

CDSS is adopting these subsections which contain regulatory language and removing it from existing handbook. Further, subsection (b)(2) clarifies that capacity is a change in conditions or limitations described on the current license that requires the caregiver to submit a new application, consistent with Section 89234, Changes to License.

Sections 89234(c) and (d) and Handbook

Specific Purpose:

Subsection (c) is adopted to specify timeframes for a caregiver to provide a new application and adopted in subsection (d) to specify that the caregiver provide reasonable notice of a

change in location of the home as specified in Section 89361, subsection (d). The handbook provides what is considered reasonable notice for the licensing agency.

Factual Basis:

The adoption of these regulations are consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The adopted regulations require the caregiver to submit a new application or provide notice to the licensing agency within specified flexible timeframes that depend on the circumstances of a change that affects his or her license.

The regulations are adopted as a result of comment by the CRRRW that it is necessary to simplify the licensing process and make it more user-friendly for caregivers. The adopted regulations provide a caregiver with flexibility in reporting changes in conditions that affect his or her license.

The regulation in subsection (d) is necessary for consistency with existing regulation in Section 89361, subsection (d), which specifies that the caregiver shall notify the licensing or approval agency "30 days prior to the move or as soon as the information is available."

Section 89235, et seq.

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity for ease of use and renumbered to accommodate the reorganization of regulations. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Section 89240, et seq.

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity for ease of use. Regulation in subsection (a)(3) is amended to specify that the correct Penal Code reference for regulation is Penal Code section 11165.6 and add reference to Penal Code sections 273a and 273d for purposes of clarity and consistency. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

In response to public comment, Section 89240(a)(1) is amended to change "Unlicensed Facility Penalties" to "Penalties for Unlicensed Homes" to promote normalization in regulations through use of the term "home."

At the Department's discretion following the public hearing, Section 89240(b)(1) is amended for clarity and consistency.

Section 89242, et seq.

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modifications:

Following the public hearing and at the Department's discretion, a non-substantive editorial change was made to Section 89242(a) for clarity and consistency.

Section 89244 Title

Specific Purpose:

The section title is amended to read "Inspection and Evaluation Authority of the Licensing Agency" for purposes of clarity and nonduplication.

Factual Basis:

This amendment of section title is consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The section title is combined with section 89245, Evaluation Visits, for clarity and to permit the section to take the place of that section. This amendment avoids duplication of regulations and references to statute that are consistent with one another.

This amendment of section title is also a result of comment by the CRRRW that this change is necessary because both this section and Section 89245, Evaluation Visits, are the same.

Section 89244(a) through (d)

Specific Purpose/Factual Basis

These regulations are amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modifications:

At the Department's discretion and in response to public comment, Sections 89244(c) and (c)(1) are amended for clarity and to clarify the obligations of a caregiver when the licensing agency requests to review the records for the home.

Section 89244(e)

Specific Purpose:

This regulation is adopted to specify that the licensing agency shall have the authority to make additional visits to a home in order to determine compliance with applicable laws and regulations.

Factual Basis:

The adopted regulation clarifies that the licensing agency has the authority to and may make additional visits to a FFH in order to determine compliance with applicable laws and regulations. This is consistent with the statutory authority of the licensing agency to ensure that regulations are being complied with by making additional visits to a home. Additional visits to a home may be warranted by conditions in the home. Regulatory language clarifies how the licensing authority may carry out this authority.

Section 89245

Specific Purpose/Factual Basis:

Section 89245, Evaluation Visits is repealed for purposes of clarity and nonduplication. The section is combined with Section 89244, Inspection Authority of the Licensing Agency, for clarity and to avoid duplication of regulations and references to statute that are consistent with one another.

This section is also repealed as a result of comment by the CRRRW that this change is necessary because both this section and Section 89244, Inspection Authority of the Licensing Agency, are the same.

Section 89246, et seq.

Specific Purpose/Factual Basis:

This section is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended section meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89246(a) is amended for clarity and consistency.

Sections 89252(a) through (d)

Specific Purpose/Factual Basis:

These sections are amended to refer to "licensing agency" instead of "evaluator" to clarify that the licensing agency has oversight authority for visits to the home. Section 89252(d)(4)(D) is amended to refer to "children" instead of "clients" for purposes of clarity and consistency. These sections are also amended by making nonsubstantive changes for purposes of clarity for ease of use. The handbook section is moved from Section 89252(d), and the (d) designation is deleted, to appear just under Section 89252(a). The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code and plain English rule drafting.

Section 89252(e) through (e)(4)

Specific Purpose:

These sections are adopted to specify the process for caregivers licensed by the state or county to appeal a citation or civil penalty for purposes of clarity and consistency.

Factual Basis:

The adopted regulations are consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. They clarify the steps a caregiver may take to appeal a civil penalty or citation by the licensing agency.

These regulations are adopted as a result of comment by the CRRRW that it is necessary to clarify the process for caregivers to appeal a citation or civil penalty.

Section 89254 Title

Specific Purpose/Factual Basis:

Section title is amended from "Penalties" to "Civil Penalties." This amendment meets the "clarity" standard of the APA, Government Code section 11349, subsection (c). The amended section title clarifies the type of penalties being referred to.

Section 89254(a) through (a)(2)

Specific Purpose:

Subsection (a) specifies that an immediate penalty of \$100 per violation shall be assessed for failure to submit fingerprints on any individual required to be fingerprinted under section 1522, subsection (b) of the Health and Safety Code is repealed. New regulations are adopted in subsections (a) through (a)(2) to specify the deficiencies that require caregivers to pay a civil penalty and civil penalties that must be paid and reference the form, Notice of Operation in Violation of Law (LIC 195), for clarity and consistency.

Factual Basis:

The repeal of regulation in subsection (a) accommodates the adoption of regulations that further clarify immediate and repeat civil penalties for caregivers. The repealed regulation is consistent with the adopted regulation in subsection (a)(2).

The adopted regulations in subsections (a) through (a)(2) are consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. They are adopted as a result of comment by the CRRRW that it is necessary to clarify civil penalties for caregivers. The adopted regulations clarify that not submitting an application for licensure and not obtaining fingerprint clearances as required by statute are the deficiencies that require caregivers to pay a civil penalty. They are also consistent with Sections 89218, Application for License and 89219, Criminal Record Clearance.

The adopted regulation in subsection (a)(1) clarifies that the Notice of Operation in Violation of Law is a CDSS CCLD form used to notify a person who is operating a FFH without a license that the home is being operated in violation of the law. The reference to this form in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category.

The adopted regulation in subsection (a)(2) clarifies and makes specific statute in sections 1522, subsections (b) and (c) of the Health and Safety Code, which specify criminal background clearance requirements that if not met, may result in a civil penalty.

Section 89254(b)

Specific Purpose:

This section is renumbered from subsection (a)(1) and amended to clarify that a caregiver will not be assessed repeat civil penalties for repeating the same violation as set forth in section 1548, subsections (d) and (e) of the Health and Safety Code. Current subsection (b) is renumbered to (c) for clarity and consistency.

Factual Basis:

The statute in section 1530.5 of the Health and Safety Code specifies that FFHs are not subject to the application of civil penalties as specified in section 1548, subsections (d) and (e) of the Health and Safety Code.

The amendment of this regulation is also a result of comment by the CRRRW that it is necessary to clarify the statutory requirements for a caregiver to pay civil penalties.

Post-Hearing Modification:

Section 89255 (Title)

Specific Purpose/Factual Basis:

Following the public hearing and in response to public comment, the section title is changed from "Unlicensed Facility Penalties" to "Penalties for Unlicensed Homes" to promote normalization in regulations through use of the term "home."

Sections 89255(a) through (e)

Specific Purpose/Factual Basis:

These sections are amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code. Regulations are amended to add the form number for the Notice of Operation in Violation of Law (LIC 195). The amended regulations are consistent with broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The Notice of Operation in Violation of Law, LIC 195, is a CDSS CCLD form used to notify a person who is operating a FFH without a license that the home is being operated in violation of the law. The reference to the form number in regulation is consistent with its listing on the CCLD website as a current form that applies to the FFH licensing category.

Final Modification:

Following the public hearing and in response to public comment, Section 89255(a), (b), and (c)(1) and (2) are amended to change the term "facility" to "home" to promote normalization in regulations through use of the term "home."

Section 89255(f)

Specific Purpose:

This section taken out of handbook and adopted as regulation to clarify that the payment of civil penalties or application for licensure do not permit the operation of a community care home without a license.

Factual Basis:

The adopted regulation is necessary for consistency between the official Barclays version of regulations on the Office of Administrative Law (OAL) website and Title 22, Division 6, Chapter 9.5, California Code of Regulations (CCR). In the existing regulations, the adopted regulation appears in handbook, but belongs in regulation and is necessary to comply with Health and Safety Code Section 1508.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89255(f) is amended to change "community care home" to "foster family home" for purposes of clarity since these regulations apply to foster family homes.

Section 89255.1, et seq.

Specific Purpose/Factual Basis:

These sections are amended to refer to "caregiver" instead of "licensee" for purposes of clarity and consistency. The amended regulation clarifies that for purposes of these regulations, the licensee is referred to as a caregiver, consistent with the caregiver definition in Section 89201, Definitions.

Section 89256, et seq.

Specific Purpose/Factual Basis:

These sections are amended to refer to "licensing agency staff person" instead of "evaluator" to clarify that the licensing agency has oversight authority for visits to the home. Regulations have also been amended for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are consistent with the requirements of style pursuant to section 11343.1 of the Government Code and plain English rule drafting.

Final Modification:

Section 89256 Title and subsection (a) are amended to change the term "facility" to "home" in response to public comment to promote normalization in regulations through use of the term "home."

Section 89261

Specific Purpose/Factual Basis:

This section is repealed because it is superseded by Section 89361, Reporting Requirements for purposes of clarity. This section is consistent with more detailed regulations in that

section. The deletion of this section avoids duplication of these regulations and references to regulations that are consistent with one another.

Handbook Section 89286(b)

Specific Purpose/Factual Basis:

This handbook section is deleted because CDSS does not have authority over building permits.

Article 3

Specific Purpose:

The title of Article 3 is changed from "License/Approval Standards" to "Core Requirements for Caregivers, Relatives, and Nonrelated Extended Family Members" to accurately describe what is contained within. Further, throughout Article 3, the term "licensing agency" is replaced with "licensing or approval agency," where appropriate, for clarity and consistency.

Factual Basis:

It is necessary to use the term "licensing or approval agency" to clarify that regulations apply to a licensed FFH and an approved relative or non-relative extended family member (NREFM) who provides foster care. This term is consistent with the caregiver definition in Section 89201, Definitions, which defines caregiver as "the person who is licensed or approved" and is used consistently throughout regulations.

Final Modification:

Following the public hearing and at the Department's discretion, the title of Article 3 is amended to change "Nonrelated" to "Nonrelative" for clarity and consistency with use of the term "nonrelative extended family member," as defined in Section 89201(n)(1), in the regulations.

Section 89317(a)

Specific Purpose/Factual Basis:

This section is amended to repeal the designation of subsection (a) because there is only one subsection, therefore unnecessary.

Section 89318(a) through (a)(7)

Specific Purpose:

The regulation in subsection (a) is amended to replace "following qualifications" with "knowledge, ability, and willingness to comply with the applicable laws and regulations"

for clarity since those requirements are spelled out or implied in the following subsections. Regulation in subsection (a)(2) is repealed as it is unnecessary after the amendment of subsection (a). Regulatory language in renumbered subsection (a)(2) that refers to "the maintenance of, financial and other" is repealed and "as specified in Section 89226, Safeguards for Cash Resources, Personal Property, and Valuables, and Section 89370, Children's Records," is adopted for purposes of clarity. Regulation in new subsection (a)(4) is adopted to implement statute and for purposes of clarity. Regulations in subsections (a)(5) through (7) are adopted for purposes of clarity.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641. The regulations clarify that the knowledge, ability, and willingness to comply with the applicable laws and regulations and meet the applicant qualifications listed in subsections (a)(1) through (7) are required of all FFH applicants.

Regulation in renumbered subsection (a)(2) is amended and regulations in subsections (a)(4) through (7) are adopted as a result of comment by the Children's Residential Regulations Review Workgroup (CRRRW), comprised of experts in the field, including advocates, county child welfare staff, current and former foster youth, foster parents, foster parent associations, and CDSS representatives. The CRRRW commented that it is necessary to clarify the financial and other records that the caregiver would be required to maintain, incorporate the reasonable and prudent parent standard (RPPS), emphasize normalization, prepare a "child" for adulthood, and attend training.

The regulation adopted in subsection (a)(4) is also consistent with sections 362.04, 362.05, and 727 of the Welfare and Institutions Code, referenced in regulation and added to statute by SB 358 (Chapter 628, Statutes of 2005) and Assembly Bill (AB) 408 (Chapter 813, Statutes of 2003) and amended in statute by AB 2096 (Chapter 483, Statutes of 2008) respectively. Section 362.04 of the Welfare and Institutions Code requires a caregiver to use the RPPS when using appropriate occasional short-term babysitters. Section 362.05 of the Welfare and Institutions Code requires a caregiver to use the RPPS in determining whether to give permission for a "child" to participate in extracurricular, enrichment, and social activities.

The regulation adopted in subsection (a)(7) is also adopted for consistency. It requires that the caregiver be willing to attend training as an applicant qualification, consistent with the caregiver training requirements specified in section 1529.2 of the Health and Safety Code and Article 4, Section 89405, Training Requirements.

The remainder of the changes in subsections (a) through (a)(7) are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and in response to public comment, Section 89318(a)(5) is amended to include "healthy, balanced, and supported" to address diversity in children since these are also aspects of promoting a normal childhood experience for all children as required by the regulation.

Section 89318(b) and Handbook

Specific Purpose/Factual Basis:

Regulation in subsection (b) has been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code. The handbook section is added to provide the language of Welfare and Institutions Code sections 362.04 and 362.05.

Final Modification:

Following the public hearing and at the Department's discretion, handbook is amended for clarity and consistency with statute.

Section 89319

Specific Purpose/Factual Basis:

A nonsubstantive amendment is made to regulatory language in Sections 89319 to meet the "clarity" and "consistency" standards of the APA, Government Code section 11349, subsections (c) and (d) and the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Following the public hearing and at the Department's discretion, non-substantive editorial changes are made for clarity and consistency.

Section 89323 (Title)

Specific Purpose/Factual Basis:

This amendment changes the section title from "Emergency Plan" to "Emergency Procedures" for purposes of clarity.

Sections 89323(a) through (a)(2)(A)

Specific Purpose/Factual Basis:

Regulation in subsection (a) is amended to require that the caregiver post emergency numbers "in a prominent location" for purposes of clarity and to promote the health and safety of children. Regulatory language from subsection (a) is moved to subsection (a)(1) for purposes of clarity. Regulation is adopted in subsections (a)(2) and (2)(A) for purposes of implementing statute and clarity.

These regulations are additionally consistent with Title 22, Division 12, Chapter 3, California Code of Regulations (CCR) Family Child Care Home (FCCH) regulations as some FFHs are dually licensed as FCCH. Caregivers are required to have training in emergency preparedness and evacuation pursuant to Sections 102368, License and 102416, Personnel Requirements, of FCCH regulations.

The regulations adopted in subsection (a)(2) and (2)(A) are also consistent with section 362.04 of the Welfare and Institutions Code, referenced in regulation. Section 362.04 of the Welfare and Institutions Code permits a caregiver to use appropriate occasional short-term babysitters. A handbook section is provided to give examples of what is considered emergency procedures.

The remainder of the changes are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and in response to public comment, a renumbering change is made to avoid duplicative numbering.

Section 89361, et seq.

Specific Purpose/Factual Basis:

Section 89361 et seq. is amended to clarify that a caregiver must report specified events to the licensing or approval agency and the "person or agency responsible for placing a child" as a result of comments by the CRRRW. The CRRRW commented that it is necessary to clarify "authorized representative" and to whom reports must be made, e.g. the placing agency, for purposes of this section. The amended regulations clarify that a report must be made to the "person or agency responsible for placing the child." "Person or agency responsible for placing the child" is more transparent terminology for identifying who is authorized by law to act on behalf of a "child." A "child" may be placed in a foster home voluntarily by a parent, legal guardian, conservator, or public placement agency. The caregiver is obligated to report to them when issues that require immediacy in reporting arise, as specified.

Section 89361(a) through (a)(9)(C)

Specific Purpose:

A new subsection (a) is adopted to clarify that a caregiver must report specified events by "telephone, e-mail, or fax within 24 hours after the event occurs or within the agency's next business day." Regulation in renumbered subsection (a)(2) is amended to require reporting of "child abuse or neglect." Regulation in renumbered subsection (a)(3) is amended to require reporting of "emergency" medical treatment or "hospitalization." Regulation in subsection (a)(5) is amended to require reporting of a communicable disease "outbreak" as reported by a health professional "or by the local health authority." Regulation in subsection (a)(7), which refers to "catastrophe" is repealed because it is unclear and unnecessary. Regulation in subsection (a)(8) is adopted to require reporting to the licensing or approval agency if the caregiver operates a family day care home. Regulatory language in renumbered subsection (a)(9) that requires reporting "within ten working days" is repealed for purposes of clarity. Regulation in renumbered subsection (a)(9)(B) is amended to clarify that any "adult moving in or out" of the home must be reported. Regulation in subsection (a)(9)(C) is adopted to clarify that except "for a "child" under the jurisdiction of the court and placed by the county, anyone living in the home who reaches their 18th birthday" must be reported. The regulations in this section are renumbered for purposes of clarity and to accommodate the reorganization of subsections.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsections (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulations in subsections (a) through (a)(9)(C) are amended because it is necessary for the caregiver to report incidents that affect the health and safety of children.

These regulations are also amended as a result of comment by the CRRRW that it is necessary to require that specified events be reported within 24 hours. All of the reportable events that follow the amended regulation in subsection (a) through (a)(9)(C) require this level of immediacy in reporting to the licensing or approval agency and the "person or agency responsible for placing a "child."

The regulation in renumbered subsection (a)(2) is amended as a result of comment by the CRRRW that it is necessary to further define physical or psychological abuse, to include sexual abuse and neglect. CDSS provides this clarification by making reference to child abuse and neglect as specified in Penal Code section 11165.6, which includes physical injury, sexual abuse, neglect, willful injury, and unlawful corporal punishment, and which must be reported.

The regulation in renumbered subsection (a)(3) is amended as a result of comment by the CRRRW that it is necessary to clarify that rather than reporting all medical treatment, the caregiver should only be required to report emergency room visits and hospitalizations. CDSS acknowledges that the existing level of reporting may cause the caregiver to report to the licensing or approval agency whenever a "child" is taken to the doctor. CDSS believes that it is most important for the caregiver to report serious medical events because of their potential outcomes and potential need for further medical consent.

The regulation in subsection (a)(5) is amended as a result of the CRRRW that it is necessary to clarify whether communicable diseases must be reported. CDSS acknowledges that the existing level of reporting may cause the caregiver to report to the licensing or approval agency whenever a "child" has a cold. CDSS believes that it is most important for the caregiver to report outbreaks of communicable disease which may affect a larger group of children. A communicable disease outbreak is typically determined by a health care professional or a county health officer.

The regulation in subsection (a)(7), which refers to "catastrophe" is repealed because CDSS finds it to be vague and sufficiently covered by the reference to "unusual incident" in renumbered subsection (a)(4). A catastrophe implies an event affecting the surrounding area and can include any number of events that would most likely become known to the licensing or approval agency. The reportable events in amended subsections (a)(1) through (a)(9)(C) are also specific to a "child" or the home.

The regulation in subsection (a)(8) is adopted because CDSS monitors the caregiver who operates both a FFH and FCCH in the same residence, also known as "dual licensure." The CDSS CCLD prohibits specialized FFH from being dually licensed because of the level of care and supervision required in these homes. It has been the experience of CCLD that homes with dual roles and responsibilities should be evaluated to ensure that they can fulfill these roles without compromising the care and supervision of a "child."

Regulatory language in renumbered subsection (a)(9) that specifies "within ten working days" is repealed to conform the reporting of changes in household composition to the "within 24 hours or within the agency's next business day" requirement for other events that the caregiver must report. Changes in household composition require greater immediacy in reporting because it may be necessary for the caregiver and licensing or approval agency to initiate time-sensitive criminal background checks for additional people in the home.

The regulation in renumbered subsection (a)(9)(B) is amended and regulation is adopted in subsection (a)(9)(C) as a result of CRRRW comment that it is necessary to clarify whether household composition reporting applies to an adult residing in the home and to non-dependent youths turning 18. CDSS clarifies that reporting applies when an adult moves in or out of the home. CDSS also clarifies that the reporting requirement exempts a "child" who has received care and supervision in the home who turns 18, but includes anyone living in the home who reaches their 18th birthday.

The remainder of the changes in these subsections are nonsubstantive and made for purposes of clarity.

Section 89361(b) through (b)(4)

Specific Purpose:

Regulation in subsection (b) is amended to clarify that a caregiver must provide a written report of specified events within 7 "calendar" days when the initial report was made by phone or did not include all of the information required on the written report." Regulation in subsection (b)(4) is amended to clarify that the written report shall contain the "current status" of an "incident."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsections (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (b) is also amended as a result of comment by the CRRRW that it is necessary to clarify the timeframe for the caregiver to provide a written report of events specified in regulation. CDSS acknowledges that a caregiver could interpret the existing reference to "days" in regulation to mean working days, which could impact the immediacy of reporting. The amended regulation in subsection (b) clarifies that a caregiver must provide a written report within 7 calendar days.

The regulation in subsection (b)(4) is amended as a result of comment by the CRRRW that it is necessary to change "disposition of case" to "current status of the incident" for clarity.

The remainder of the changes in subsections (b) through (b)(4) are nonsubstantive and made for purposes of clarity.

Section 89361(c) and (d)

Specific Purpose/Factual Basis:

Regulations are amended in subsections (c) and (d) to clarify that a caregiver must provide notification of a change in the caregiver's mailing address or the location of the home by "telephone, e-mail, or fax."

The regulations are amended pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. Including telephone, e-mail, and fax as options for notification provide the caregiver with greater flexibility in meeting notification timeframes.

The remainder of the changes in subsections (c) and (d) are nonsubstantive and made for purposes of clarity.

Section 89361(e) through (e)(4)

Specific Purpose/Factual Basis:

These regulations are repealed for purposes of clarity. The adopted regulations in Section 89378, Responsibility for Providing Care and Supervision, clarify when a caregiver must provide notification of their absence from the home and what information must be provided with this notification.

Section 89370(a) through (a)(6)

Specific Purpose:

Regulation is amended in subsection (a) to repeal "a current placement agreement" and "Needs and Services Plan" for purposes of clarity. Regulations are adopted in subsections (a)(2), (a)(2)(A) and (B) to require a "Health and Education Passport" including mental health information, and maintenance of other health and education records. Regulation is amended in subsection (a)(3) to clarify that the caregiver must have written "authorization" for "medical and dental care in an emergency." Regulation is adopted in (a)(4) to require a "written plan identifying the specific needs and services of the 'child'" for purposes of clarity. Regulations are adopted in subsections (a)(5) and (6) to require "pre-placement information as specified in Section 89468, subsection (b)," and an "itemized inventory list of cash resources, personal property, and valuables of a "child" as specified in Section 89226, subsections (a) and (d)."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsections (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The repeal of regulatory language in subsection (a) is necessary because it held a caregiver responsible for maintaining the "placement agreement," information which is controlled by and would have to be obtained from the county social worker. Responsibility for obtaining this information should be the responsibility of the county social worker.

The regulations in subsections (a)(2), (a)(2)(A) and (B) are adopted as a result of comment by the CRRRW. The CRRRW commented that it is necessary to include in a child's record the Health and Education Passport as well as records provided by physicians and educators.

The regulation in subsection (a)(3) is amended to require written authorization to obtain medical or dental care. This regulation is necessary to protect the health and safety of children.

The regulations in subsections (a)(5) and (6) are adopted as a result of comment by the CRRRW. The CRRRW commented that the caregiver may not always receive required documents that provide information about a "child" at placement. CDSS provides for a Pre-Placement Questionnaire to permit the caregiver to ask questions about a "child" and requires in subsection (a)(5) that the caregiver maintain this pre-placement information in the records for a "child." This regulation is consistent with regulations in section 89468, Admission Procedures, which require that the caregiver obtain pre-placement information about a "child."

The CRRRW also commented that it is necessary for the caregiver to have an itemized inventory of cash resources, personal property, and valuables that belong to a "child" from the placement social worker for the "child." CDSS requires in subsection (a)(6) that the caregiver maintain this inventory in the records for a "child," to safeguard the belongings of a "child" and protect the caregiver from potential liability.

The remainder of the changes in subsections (a) through (a)(6) are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89370(a)(3) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial and grammatical changes are made.

Sections 89370(b) and (c)

Specific Purpose/Factual Basis

These subsections have been renumbered and amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change is made to Section 89370(b)(1).

Section 89372 et seq.

Specific Purpose/Factual Basis:

The subsections that duplicated statute in section 16001.9 of the Welfare and Institutions Code are repealed for purposes of clarity and nonduplication. The section is renumbered accordingly.

Section 89372(a)

Specific Purpose/Factual Basis:

This subsection is amended to clarify that each "child" is to be accorded the personal rights specified in statute and additional personal rights accorded by CDSS. The amended regulation clarifies that a caregiver must observe the personal rights that are accorded to a "child" by statute and CDSS. Additional personal rights afforded to a "child" by CDSS are consistent with and in the spirit of referenced statute in section 16001.9 of the Welfare and Institutions Code.

Section 89372(a)(1) through (a)(10)(B)

Specific Purpose:

These subsections are reorganized for clarity. Subsections (a)(2) through (a)(2)(B) are amended to clarify that each "child" is "allowed to possess and use" their own clothes "provided the clothes are age-appropriate," "do not violate school standards when worn during school activities," and "are in accordance with the gender identity of" the "child" and toiletries and "personal hygiene products, including enclosed razors used for shaving, as age and developmentally appropriate." Subsection (a)(2)(C) is adopted to require that each "child" be allowed to possess and use their own belongings, including gifts.

Regulations in subsections (a)(3) through (3)(C) are amended to repeal the requirement which limited visits with relatives to "during waking hours" and repeal reference to "authorized representative" in subsection (a)(3)(A).

Regulation in subsection (a)(5) is amended to adopt "and electronic communication" for purposes of clarity. Regulations in subsection (a)(5)(A) and (a)(5)(B)4. are amended to clarify that a probation officer may also make and review restrictions on telephone calls and correspondence. Regulation in subsection (a)(5)(B)4. is amended to repeal "in compliance with (B) above" and adopt "except as prohibited in (D) below" for purposes of clarity. Regulation is adopted in subsection (a)(5)(B)5. to permit restrictions on Internet use when appropriate. Regulations in subsections (a)(5)(C) is amended to clarify that no restrictions may be applied to telephone calls and correspondence "with relatives, including brothers and sisters, unless prohibited by court order." Regulation in subsection (a)(5)(D) is adopted to clarify that no restrictions may be applied to telephone calls and correspondence with specified parties, which include attorneys and Court Appointed Special Advocates (CASA).

Regulation in subsection (a)(8) is amended to clarify that a "child" is not to be "restrained" or placed in any restraining device "other than as specified in Section 89475.2, Postural Supports and Protective Devices."

Regulations are adopted in subsections (a)(10) through (a)(10)(B) to require that the caregiver maintain the confidentiality of personal information about a "child" and disclose this information to specified parties when appropriate, unless such disclosure is prohibited.

A handbook section is included to provide pertinent language of Welfare and Institutions sections 16001.9 and 369.5.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. These amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child"; the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulations in subsections (a)(2) through (a)(2)(B) are amended and the regulation in subsection (a)(2)(C) is adopted as a result of comment by the CRRRW. CRRRW comment indicates that it is necessary to provide and establish appropriate clothing standards, i.e. accepted by the schools. This reference to gender identity of the "child" is adopted as the result of participation in the CRRRW by organizations representing gay and lesbian foster parents and youth, including the National Center for Lesbian Rights (NCLR). The regulation in subsection (a)(2)(B) is also amended as a result of recent Foster Family Agency (FFA) correspondence on behalf of a youth in foster care who commented that it is necessary to clarify that a youth should have independent access to a razor to shave as necessary for personal hygiene, if age and developmentally appropriate.

The regulation in subsection (a)(3)(A) is amended because there is no statutory limitation in section 16001.9 of the Welfare and Institutions Code on when visitation with relatives may occur. The regulation in subsection (a)(3)(A) is amended to repeal "authorized representative" because there is no statutory provision in section 16001.9 of the Welfare and Institutions Code that authorizes the authorized representative to prohibit visits between a "child" and relatives.

The regulation in subsection (a)(5) is amended to include contacts that are made via electronic communication and the regulation in subsection (a)(5)(B)5 is adopted to include restrictions on Internet usage as a result of CRRRW comment. The CRRRW commented that it is necessary to update regulations to reflect these technologies. Also as a result of CRRRW comment, the regulation in subsection (a)(5)(C) is amended to clarify that no restrictions shall be made on specified contacts unless prohibited by court order. The amendment to regulation in subsection (a)(5)(C) is also consistent with section 16001.9 of the Welfare and Institutions Code.

The regulations in subsection (a)(5)(A) and (a)(5)(B)4. are amended to clarify that the probation officer may also make and review reasonable restrictions on telephone calls and correspondence, consistent with section 727, subsection (a)(3) of the Welfare and Institutions Code. This statute specifies that wards of the court may be placed by a probation officer in a licensed FFH. Regulations are amended to extend this personal rights provision for dependents of the court to wards of the court.

Regulation in subsection (a)(5)(B)4. is amended to repeal "in compliance with (B) above" and adopt "except as prohibited in (D) below" for purposes of clarity and continuity between regulations.

The regulation in subsection (a)(8) is amended as a result of CRRRW comment that it is necessary to clarify whether and when restraints may be used on a "child." CDSS permits appropriate restraint of a "child" by postural supports and protective devices because a "child" may be at risk of harm due to a disability or health condition.

The regulations in subsections (a)(10) and (10)(A) and (B) are adopted as a result of CRRRW comment that it is necessary to clarify how a caregiver should handle confidential information about a "child." The regulations are consistent with referenced statute in section 827 of the Welfare and Institutions Code, which specifies those who may have access to the case file for a "child." These regulations are consistent with increased protections safeguarding private information for the general public, including the Health Insurance Portability and Accountability Act [HIPAA, Public Law (P.L.) 104-191] and privacy statutes.

The remainder of the changes in subsections (a)(1) through (a)(10)(B) are nonsubstantive and made for purposes of clarity.

Sections 89372(b) and (b)(1)

Specific Purpose:

Regulation is adopted in subsection (b) to clarify that in ensuring the rights of a "child," the caregiver is not required to take any action that would impair the health and safety of the "child" or household members. Regulation in subsection (b)(1) is renumbered from (c)(19)(A) and amended to clarify that caregivers are not prohibited from locking exterior doors and windows or establishing house rules for the protection of "a child or household members."

Factual Basis:

The regulation in subsection (b) is adopted and the regulation in subsection (b)(1) is amended to clarify and make specific section 16001.9, subsection (b) of the Welfare and Institutions Code. The personal rights accorded to a "child" do not supersede the responsibility of the caregiver to ensure the health and safety of household members.

The remainder of the changes in subsections (b) and (b)(1) are nonsubstantive and made for purposes of clarity.

Section 89372(c)

Specific Purpose:

Regulation is adopted in subsection (c) to clarify that a "child" should be notified both verbally and in writing of the personal rights accorded to them while in foster care.

Factual Basis:

The regulation in subsection (c) is adopted as a result of comment by the CRRRW that it is necessary to clarify who advises about personal rights and who receives a copy of the personal rights. This regulation is necessary to be consistent with statute in section 1530.91, subsection (a) of the Health and Safety Code and reinforces regulation in Section 89468, Admission Procedures, which refers to a "child" being advised about personal rights when they are placed in the home.

Section 89373

Specific Purpose:

Regulation is amended to clarify that telephone service has to be "readily accessible in the home at all times" and that "the licensing or approval agency" must approve and document the alternative telephone access "using a Documented Alternative Plan (LIC 974)."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of Welfare and Institutions Code, added to statute by SB 1641.

This regulation is amended as a result of comment by the CRRRW that it is necessary to clarify that alternate methods of telephone access would be acceptable for meeting this regulation. Comment indicates that some caregivers use a cell phone in their home instead of a landline phone and that a cell phone should be adequate if it remains in the home while children are present. The amendment clarifies that telephone access "in the home" is ideal, but is permissive and does not rule out the use of cell phones. These forms of alternate telephone access may be used if the licensed or approved caregiver obtains approval for a Documented Alternative Plan (DAP) from the licensing or approval agency.

The use of a DAP permitted by this regulation is consistent with the definition of a DAP in section 89201, Definitions. The reference to the DAP form for telephones (LIC 974) is consistent with the listing of this form on the CCLD website as a current form that applies to the FFH licensing category.

The remainder of the changes to this section are nonsubstantive and made for purposes of clarity.

Section 89374(a)

Specific Purpose:

This regulation is amended to repeal vague language.

Factual Basis:

This regulation is amended as a result of comment by the CRRRW that the requirement to comply with "all applicable laws" is too vague. CDSS has repealed the reference to "all applicable laws," but declines to list applicable laws because some laws may be outside CDSS jurisdiction.

The remainder of the changes are nonsubstantive and made for purposes of clarity.

Section 89374(b)

Specific Purpose:

Subsection (b) is adopted to require that the caregiver not allow the "child" to be transported by an individual who does not have a valid California or other state driver's license.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation is adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of Welfare and Institutions Code, added to statute by SB 1641. The regulation clarifies the level of transportation safety required in the home.

The regulation is adopted pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulation establishes a safety standard to protect the health and safety of children.

Section 89374(c) through (c)(3)

Specific Purpose:

Subsection (c) is adopted to require the caregiver to ensure that transportation is provided for a "child" unless other arrangements as specified are made. Regulations are adopted in subsections (c)(1) through (3) to require that a "child" be provided with transportation to "medical appointments," "school," and "extracurricular, enrichment and social activities, provided the transportation to these activities is reasonable." A handbook section is provided to further clarify the regulation.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child"; the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

These regulations are adopted as a result of comment by the CRRRW that it is necessary to clarify who is responsible for transporting the "child" to court, visits with parents and siblings, and medical appointments. The CRRRW also commented that some caregivers are providing long-distance transportation that can be time-consuming. The regulations clarify that the caregiver's responsibility for transportation is in the capacity of providing foster care and must be "reasonable," but endeavor to normalize the life of a "child" by including the typical transportation duties of a parent.

The requirement that the caregiver ensure that a "child" has transportation to extracurricular, enrichment, and social activities is consistent with section 362.05 of the Welfare and Institutions Code, added to statute by AB 408 (Chapter 813, Statutes of 2003). This statute entitled a "child" to participate in these activities, to normalize the experience of being in foster care.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89374(c) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89376(a) and (a)(1)

Specific Purpose:

Subsection (a) is amended to require that the caregiver shall provide a "child" with "between-meal snacks" and "food" as necessary "unless the physician of the child advises otherwise." Subsection (a)(1) is adopted to require that the caregiver provide a "child" with the same "quantity and quality of food" as other members of the household.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted and amended to normalize the lives and to promote the well being of children in foster care. The adopted and amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-

like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (a) is amended as a result of comment by the CRRRW. The CRRRW commented that it is necessary to clarify what nutrition the caregiver is required to provide to the "child," flexibility for the caregiver, and physician advice. The amended regulation clarifies that the caregiver must provide both meals and snacks unless otherwise advised by a physician. The availability of snacks normalizes the life of a "child" as snacks are a typical component of nutrition in the home. The remainder of the changes to subsection (a) are nonsubstantive and made for purposes of clarity.

The regulation in subsection (a)(1) is adopted as a result of CRRRW comment that it is necessary to clarify that food shall be equally available to all children in the home, whether they are a "child" or another child in the caregiver's household. This regulation is consistent with section 89318, Applicant Qualifications, subsection (a)(5), which requires that the caregiver "treat a child" placed in his or her home as part of the family, to the extent possible.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change is made for clarity and consistency.

Section 89376(b)

Specific Purpose:

Regulation is amended to clarify that "a child" "shall be invited to participate in all household" meals.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641.

Existing regulation requiring that a "child" have their meals with the family when eating at home is repealed because a "child" is not required to, but has the option to, eat with the family.

The amended regulation is the result of comment by the CRRRW that it is necessary to clarify that a "child" shall be "invited" to participate in household meals. Being included in meals normalizes the life of a "child" as family mealtimes are a typical household routine. This regulation is consistent with Section 89318, Applicant Qualifications, subsection

(a)(5), which requires that the caregiver "treat a child" placed in his or her home as part of the family, to the extent possible.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive grammatical change is made for clarity and consistency.

Section 89376(c)

Specific Purpose:

Subsection (c) is amended to clarify that an "infant who is unable to hold a bottle" shall be held during bottle-feeding and to clarify other requirements for bottle feeding a "child" who is an infant.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

Existing regulation requiring that infants under seven months be held during bottle feeding is repealed to base regulation on ability rather than age.

This regulation is amended pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. It clarifies that infants who are unable to hold a bottle shall be held during bottle feedings, a bottle shall not be propped for an infant, and a bottle that is given to infants able to hold a bottle shall be unbreakable.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change is made for clarity and consistency.

Section 89376(d) and (d)(1)

Specific Purpose:

Regulations are adopted in subsections (d) and (d)(1) to clarify that a "child" may learn meal preparation, but shall not be required to prepare meals, and may use kitchen knives and appliances to learn meal preparation.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations are adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulations endeavor to normalize the life of a "child" through a permissive requirement that the caregiver may encourage a "child, as age- and developmentally appropriate, to learn meal preparation. They clarify that the caregiver shall not require a "child" to prepare meals, which is also consistent with normalization. Learning meal preparation is an enrichment activity consistent with section 362.05 of the Welfare and Institutions Code, added to statute by AB 408 (Chapter 813, Statutes of 2003).

Section 89377 et seq.

Specific Purpose:

A new section, 89377, Reasonable and Prudent Parent Standard, is adopted to implement statute and require the caregiver to apply the reasonable and prudent parent standard (RPPS).

Factual Basis:

The adoption of this section implements statute in sections 362.04, 362.05, and 727 of the Welfare and Institutions Code, mandated by SB 358 (Chapter 628, Statutes of 2005), AB 408 (Chapter 331, Statutes of 2003), and AB 2096 (Chapter 483, Statutes of 2008) respectively. It is the intent of CDSS to provide this section as global regulation on the application of RPPS as specified in sections throughout the regulations. The section defines how the caregiver must apply the RPPS in foster care and clarifies the caregiver's responsibilities with respect to use of the standard. The caregiver, relative, and NREFM must acknowledge and be able and willing to meet core health and safety requirements, including the RPPS, as a condition of licensure or approval.

Regulations are adopted in subsections (b) through (c)(3) to require the caregiver to follow specified guidelines for the use of RPPS.

The regulation adopted in subsection (b) clarifies that the caregiver shall not deny the personal rights of the "child," contradict court orders or the written plan identifying the specific needs and services of the "child" when applying the RPPS. This regulation is consistent with personal rights statute in section 16001.9 of the Welfare and Institutions Code and documents which specify appropriate care for a "child."

The regulations adopted in subsection (c)(1) through (3) clarify that the caregiver shall consider the age, maturity, and developmental level of a "child," the nature and inherent risks of harm, and the best interest of a "child" when applying the RPPS. This regulation is consistent with statute in section 362.05 of the Welfare and Institutions Code, which requires the caregiver to "take reasonable steps to determine the appropriateness of the activity."

Regulation is adopted in subsection (d) to clarify that the caregiver with dual licensure as a FCCH may not use the RPPS when making decisions about children under the jurisdiction of FCCH regulations. The adoption of this regulation is consistent with FCCH regulations, Title 22, Division 12, Chapter 3, Family Child Care Homes, which do not explicitly permit caregivers to use the RPPS when making decisions about children in the FCCH.

Section 89378(a)

Specific Purpose:

Subsection (a) is amended to repeal the requirement that the caregiver be available at all times and to adopt language to clarify that the caregiver is required to, at a minimum, provide services as specified.

Existing regulation in subsection (b) that requires the caregiver to provide each "child" with services specified in the child's Needs and Services Plan and Transitional Independent Living Plan (TILP), if applicable, is repealed because this requirement is now clarified in subsection (a).

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The amendment of this regulation is the result of comment by the CRRRW that it is necessary to clarify the need for the caregiver to "be available at all times." The requirement that the caregiver be available at all times is repealed to normalize the operations of a FFH and allow for typical instances when the caregiver may be unavailable. The amended regulation clarifies that the caregiver must provide the services specified in the written plan identifying the specific needs and services of the "child," placement agreement, and Transitional Independent Living Plan (TILP), if applicable. This regulation is necessary to promote normalization for children.

Section 89378(a)(1)(A) through (F)

Specific Purpose:

Subsections (a)(1)(A) through (F) are adopted to clarify other types of care and supervision that are allowed for a "child" and the requirements for each.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child"; the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulations in subsections (a)(1)(A)1.-4. clarify that the caregiver may arrange for an occasional short-term babysitter and the requirements for using such a babysitter. The regulations are necessary to be consistent with section 362.04 of the Welfare and Institutions Code, referenced in regulation and added to statute by SB 358 (Chapter 628, Statutes of 2005). Section 362.04 of the Welfare and Institutions Code requires a caregiver to use the RPPS when using appropriate occasional short-term babysitters.

The adoption of regulations in subsections (a)(1)(B)1.-4. clarify that the caregiver may arrange for an alternative caregiver and specifies criteria for choosing an "alternative caregiver." CDSS provides these regulations in an endeavor to provide a broader range of flexible options for providing care and supervision to normalize the operation of a FFH for the caregiver, who may wish to go on vacation, but requires guidelines for arranging alternate care. CDSS also endeavors to normalize life and provide stability for the "child" by requiring them to remain in the FFH in the absence of the caregiver.

The regulations in subsections (a)(1)(B)1.-4. are also adopted as a result of CRRRW comment that it is necessary to apply the RPPS to care and supervision and have timeframes for social worker and probation officer notification and approval. These regulations are consistent with broad CDSS authority to develop "such reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent" of statute pursuant to section 1530 of the Health and Safety Code.

The adopted regulations in subsections (a)(1)(C)1.-2. clarify that the caregiver may use "respite care" consistent with section 16501, subsection (b) of the Welfare and Institutions Code and Child Welfare Services (CWS) Manual of Policies and Procedures (MPP) Division 31 regulations. These regulations are necessary to ensure that caregivers know that "respite care" is available when necessary and reciprocate with Division 31 regulations.

The adoption of regulations in subsections (a)(1)(D)1.-2. clarifies that the caregiver may leave the "child" alone without adult supervision if specified criteria, including the use of the prudent parent standard, are met. CDSS provides these regulations in an endeavor to normalize the lives of children. CDSS agrees that it is reasonable for caregivers to be away from the home for brief periods of time for errands, appointments, and similar day-to-day activities.

The regulations in subsections (a)(1)(D)1.-2. are also adopted as a result of CRRRW comment that it is necessary to apply the RPPS to care and supervision and require the caregiver to provide an environment that supports preparing a "child" for adulthood, as age- and developmentally appropriate. These regulations are consistent with broad CDSS authority to develop "such reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent" of statute pursuant to section 1530 of the Health and Safety Code.

The adopted regulation in subsection (a)(1)(E) clarifies that the caregiver may arrange care and supervision for a "child" in a licensed child care facility as defined by section 1596.750 of the Health and Safety Code. CDSS provides this regulation in an endeavor to normalize the operation of a FFH for the caregiver, who may need or wish to be employed outside the home or away from the home for brief periods of time for errands, appointments, and similar day-to-day activities. CDSS also endeavors to normalize life for the "child" and provide them with opportunities for enrichment and social activities, such as those that are available in a licensed child care facility.

The adoption of regulation in subsection (a)(1)(F) clarifies that the caregiver using the RPPS may permit a "child" to participate in extracurricular, enrichment, and social activities as a form of care and supervision. This regulation is pursuant to CDSS authority to promulgate regulations to implement statute and is consistent with section 362.05 of the Welfare and Institutions Code, referenced in regulation and added to statute by AB 408 (Chapter 813, Statutes of 2003). Section 362.05 of the Welfare and Institutions Code requires a caregiver to use a reasonable and prudent parent standard in determining whether to give permission for a "child" to participate in extracurricular, enrichment, and social activities. This regulation normalizes life for the "child" and provides them with opportunities to participate in a variety of activities.

Final Modification:

In response to public comment, Section 89378(a)(1)(D)1. is amended to clarify that a child is not to be left unsupervised overnight. Other non-substantive editorial, grammatical, and renumbering changes are made.

Section 89378(b) and (b)(1)

Specific Purpose:

Subsection (b) is adopted to require the caregiver to observe the requirements of section 15620 of the Vehicle Code and apply the RPPS when leaving a "child" alone in a car. Subsection (b)(1) is adopted to prohibit the caregiver licensed to operate a FCCH from leaving a day care child alone in a car.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A) and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

The adopted regulation in subsection (b) is consistent with broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. Section 15620 of the Vehicle Code refers to a "parent, legal guardian, or other person responsible for a child who is 6 years of age or younger" with regard to leaving a child alone in a car. CDSS has determined that foster parents are acting in the role of the persons described in this statute and that this statute applies.

The adopted regulation in subsection (b)(1) is consistent with FCCH regulations as some FFHs are dually licensed as FCCH. Title 22, Division 12, Chapter 3, California Code of Regulations (CCR) Section 102417, Operation of a Family Child Care Home, subsections (i) and (j) require that caregivers follow these requirements. Section 102417(k)(1) of these regulations prohibits the caregiver from leaving a day care child alone in a parked vehicle.

Section 89378(c) through (c)(2)

Specific Purpose:

Regulation in subsection (c) is amended to replace the reference to "placement" with "the home" for purposes of clarity and consistency. Regulation in subsection (c)(2) is adopted to require the caregiver to participate in the development of a shared responsibility plan for a minor parent in the home.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulation have been adopted and amended to normalize the lives and to promote the well being of children in foster care. The adopted and amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-

like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (c) is amended pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The term "placement" is replaced by reference to "the home," to clarify that the regulation applies to the caregiver's home, in which a minor parent is placed. The term "home" normalizes the experience of being in foster care and is used consistently in regulations. The remainder of the changes to subsection (c) are nonsubstantive and made for purposes of clarity.

The regulation in subsection (c)(2) is adopted as a result of comment by the CRRRW that it is necessary to reflect new minor parent statute. The regulation is necessary to be consistent with sections 11400, subsection (t), 11465, subsection (b)(2), and 16501.25, subsection (b) of the Welfare and Institutions Code, referenced in regulation and added to statute by SB 500 (Chapter 630, Statutes of 2005). These statutes define a Whole Family Foster Home (WFFH), specify caregiver responsibility for the shared responsibility plan, and describe the plan.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89378(c) is amended to clarify that this section is referring to a minor parent's child(ren) placed in the home and to be consistent with subsequent references in subsections (c)(1) and (2).

Section 89378(d)

Specific Purpose/Factual Basis:

Regulation is amended to repeal "foster" and "foster care provider" and adopt "caregiver" for clarity and consistency. The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89378(d) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89379(a)

Specific Purpose:

This section is amended to clarify that a "child" "shall be entitled to participate in age and developmentally appropriate extracurricular, enrichment, and social activities" and repeal unnecessary language for purposes of clarity.

Factual Basis:

The amendment to regulation is necessary to be consistent with section 362.05 of the Welfare and Institutions Code, added to statute by AB 408 (Chapter 813, Statutes of 2003). Section 362.05 of the Welfare and Institutions Code specifies that "Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities."

Repealed language is unnecessary because it is clarified in this subsection that a "child" is "entitled" to participate in activities and the caregiver is required in subsection (b) to promote a child's participation in activities.

Section 89379(b)

Specific Purpose:

Regulation in subsection (b) is repealed. Regulation in new subsection (b) is adopted to require the caregiver to promote participation by a "child" in activities and apply the RPPS.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

Regulation in subsection (b) is repealed consistent with section 362.05 of the Welfare and Institutions Code, referenced in regulation and added to statute by AB 408 (Chapter 813, Statutes of 2003). Section 362.05 of the Welfare and Institutions Code requires a caregiver to use a reasonable and prudent parent standard in determining whether to give permission for a "child" to participate in extracurricular, enrichment, and social activities. This regulation is repealed as the caregiver will now be required to apply the RPPS when permitting a "child" to participate in activities. A consideration for the caregiver in applying the RPPS is the supervision that will be provided at any activity, including an activity sponsored by a third party.

Regulation in subsection (b) is adopted as a result of comment by the CRRRW and CDSS discussion. The CRRRW commented that it is necessary to require that activities be highly encouraged. CDSS discussion resulted in the requirement that the caregiver be required to "promote" participation by a "child" in activities.

Section 89379(c) through (c)(7)

Specific Purpose:

Regulation in subsection (c) is amended to clarify that the caregiver shall also allow access to existing information regarding available "emancipation programs." Regulation has been adopted in subsection (c)(7) to require the caregiver to allow access to information about requirements for participation in Transitional Housing Program (THP)-Plus.

Factual Basis:

The amendment to regulation in subsection (c) and adoption of regulation in subsection (c)(7) to make reference to emancipation programs and THP-Plus are necessary to provide a broader range of services for youth who are emancipating from foster care.

Reference to THP-Plus is also consistent with statute in section 1559.110, subsections (c), (d), and (e) of the Health and Safety Code and sections 11403.2, subsection (a)(2) and 16522, subsections (b) and (d) of the Welfare and Institutions Code, which establish participant age and program design guidelines for THP-Plus. A number of counties and independent providers have established THP-Plus programs to assist emancipated foster youth as specified in these statutes.

The remainder of the changes in subsections (c) and (c)(1) through (7) are nonsubstantive and made for purposes of clarity and consistency.

Section 89387(a) through (a)(12)

Specific Purpose:

Section 89387 is rearranged for clarity. Subsection (a) is amended to add the form number for the Documented Alternative Plan (LIC 973). Regulations are adopted in subsections (a)(2)(A) and (a)(2)(B) to adopt provisions for sharing bedrooms. Regulation is adopted in subsection (a)(3)(B) to specify that a "child" who turns 18 is not considered an adult for purposes of sharing a bedroom. Regulation in subsection (a)(6) is renumbered from subsection (q) and amended to clarify that if the caregiver's home is in a high rise building, the caregiver is subject to the rules and regulations set forth by the State Fire Marshal. Regulations in subsection (a)(8) et seq. are renumbered from subsection (j) et seq. and clarify that bunk beds shall have railings on "both sides of" the upper tier and that a "child" who is under "six" shall not be permitted to use the upper tier of a bunk bed. Regulations are adopted in subsection (a)(9)(A) through (E) to specify requirements for cribs. Regulation in subsection (a)(11) is amended to add "children of a minor parent." Other nonsubstantive amendments are made to these subsections.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that

the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641.

The amended regulation in subsection (a) is necessary to reference to the DAP form number (LIC 973) for clarity and ease of use.

The adopted regulation in subsection (a)(2)(A) is a result of comment by the CRRRW that it is necessary to clarify that a bedroom may be shared by a minor parent and their child of the opposite sex. This regulation normalizes the lives of a "child" who may be a minor parent and his or her child. CDSS agrees that this regulation is reasonable and consistent with section 1530 of the Health and Safety Code, which authorizes CDSS to develop "such reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent" of statute.

The adopted regulation in subsection (a)(2)(B) allowing the caregiver to request a DAP to permit a "child" to be in a bedroom based on their gender identity is consistent with the requirement that the caregiver allow a "child" to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This requirement is consistent with personal rights statute in section 16001.9, subsection (a)(23) of the Welfare and Institutions Code.

The adopted regulation in subsection (a)(3)(B) is a result of comment by the CRRRW that it is necessary to permit a "child" who is 18 or older to be an exception to the requirement that children not share a bedroom with an adult. The regulation is consistent with statute that permits a "child" to remain in the home past 18 in specific circumstances. A "child" may remain in the home until they are 19 if they are pursuing an education or vocational or technical training as permitted by section 11403 of the Welfare and Institutions Code or until they are 22 if they have special health care needs as specified in section 17710 of the Welfare and Institutions Code.

The regulation in subsection (a)(6) is renumbered from subsection (q) as a result of comment by the CRRRW that it is necessary to reorganize subsections within this section so that they are more user-friendly. The amended regulation concerns operable windows and doors for bedrooms or sleeping rooms and are specific to bedrooms rather than general buildings and grounds, where it was originally placed. The regulation is also amended as a result of comment by the CRRRW that it is necessary to clarify window safety requirements for high rise buildings. The regulation clarifies that if the caregiver's home is in a high rise building, the caregiver is subject to the rules and regulations set forth by the Fire Marshal.

The regulations in subsection (a)(8) is renumbered from subsection (j) as a result of comment by the CRRRW that it is necessary to reorganize subsections within this section so that they are more user-friendly. The regulations concerns bunk beds and are also specific to bedrooms rather than general buildings and grounds, where they were originally placed.

The amended regulation in subsection (a)(8)(A) clarifies that bunk beds must have railings on both sides of the upper tier, a standard necessary to promote the health and safety of children. The amended regulation in subsection (a)(8)(B) clarifies that a "child" must be at the minimum age of six to use the upper tier of a bunk bed. The regulation is consistent with Federal Hazardous Substances Act and Consumer Product Safety Act rules effective 6/19/2000, in Code of Federal Regulations (CFR) Title 16 regulations. Section 1513.6 of these regulations specify that to help prevent serious or fatal injuries from entrapment or falls, a child under the age of six should never be allowed on the upper tier.

The adopted regulations in subsection (a)(9)(A) through (E) are consistent with broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code and are necessary to promote the health and safety of children.

The amended regulation in subsection (a)(11) clarifies that regulations apply to bedrooms shared by a minor parent and his or her child. The regulation is consistent with the adopted regulation in subsection (a)(2)(A), which permits a minor parent to share a bedroom with their child of the opposite sex.

The remainder of the changes in subsections (a) through (a)(12) are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and in response to public comment, Section 89387(a)(3)(B) is amended to clarify that a "child" who turns 18 as described in Section 89201(c)(7)(A) and (B) while sharing a bedroom with another "child" may continue to share a bedroom with that "child" for continuity.

Section 89387(a)(9) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial and grammatical changes are made.

Sections 89387(b) and (c)

Specific Purpose/Factual Basis:

These sections are amended by making nonsubstantive changes for purposes of clarity for ease of use. Subsection (c) is also amended to repeal language that is vague and unclear. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Section 89387(d) through (d)(2)(D)

Specific Purpose:

Subsection (d) is amended to repeal reference to "fish ponds," which is adopted in subsection (d)(1) for purposes of clarity. Regulation is adopted in subsection (d)(1) to clarify that the caregiver shall use the RPPS when deciding whether to allow a "child" to have access to fish ponds and other similar bodies of water. Subsection (d)(1) is renumbered to subsection (d)(2). Regulation in subsection (d)(2)(A)1. is adopted to require that if used, removable mesh pool fencing be installed and maintained according to the manufacturer's specifications. Regulation in subsection (d)(2)(B) is amended to clarify that a pool safety net must meet American Society for Testing and Materials standards and that pool covers "shall be supported by flotation devices." Regulation in subsection (d)(2)(B)1. is adopted to prohibit pool safety nets in FFHs that are dually licensed as FFH. Regulation in subsection (d)(2)(C) is amended to replace "Department" with "licensing or approval agency." Regulation in subsection (d)(2)(C)1. is repealed and regulation in subsection (d)(2)(C)2. is renumbered accordingly. Regulation in subsection (d)(2)(D) is amended to clarify that "other means of protection must be approved in writing by the licensing or approval agency" and to repeal unnecessary requirements. Regulation in subsection (d)(2)(D)1. is repealed. Regulation in subsection (d)(2)(D)1. is renumbered from (d)(2)(D)2. to accommodate the repeal of regulation and amended to clarify that it applies to a home that is licensed or "approved." Other nonsubstantive amendments are made for clarity and consistency.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (d) is amended to repeal language that is outdated, unclear, and unnecessary and repeal "fish ponds," which are not subject to the fencing requirement for swimming pools and bodies of water that are like swimming pools.

The regulation in subsection (d)(1) is adopted to clarify that the caregiver shall use the RPPS when deciding whether a "child" should have access to fish ponds, fountains, creeks, and other similar bodies of water that may be found near a home. These bodies of water are not subject to the fencing requirement for swimming pools and bodies of water that are like swimming pools. This regulation is consistent with the definition of RPPS as specified in section 362.04 of the Welfare and Institutions Code.

The regulation in (d)(2)(A)1. is adopted consistent with referenced statute in section 115922, subsection (a)(2) of the Health and Safety Code relating to removable mesh pool fencing. This statute specifies that removable mesh pool fencing must meet American

Society for Testing Materials (ASTM) standards. The regulation establishes a conventionally accepted and generally applicable standard for ensuring health and safety.

The regulation in subsection (d)(2)(B), renumbered from subsection (d)(1)(B), is amended as a result of comment by the CRRRW that it is necessary to clarify the specific types of pool covers that are acceptable. The regulation is consistent with referenced statute in section 115921, subsection (d) of the Health and Safety Code relating to pool safety covers. This statute is consistent with statutory requirements for removable mesh pool fencing and specifies that pool safety covers must meet American Society for Testing Materials (ASTM) standards. The requirement that pool safety covers be supported by flotation devices is necessary to establish an additional standard for ensuring health and safety.

The regulation in subsection (d)(2)(B)1. is adopted consistent with Title 22, Division 12, Chapter 3, California Code of Regulations (CCR) FCCH regulations. Section 102417, subsection (g)(5) of the FCCH regulations specify that licensees shall ensure the inaccessibility of in- and above-ground pools, fixed-in place wading pools, hot tubs, spas, fish ponds, and similar bodies of water through a pool cover or by surrounding the pool with a fence. By their exclusion from FCCH regulations, pool safety nets are not allowed in a home that is dually licensed as a FFH and FCCH.

The regulation in subsection (d)(2)(C), renumbered from subsection (d)(1)(C), is necessary to clarify that licensing or approval agencies can make specified determinations.

Regulation in subsection (d)(2)(C)1., renumbered from subsection (d)(1)(C)1., is repealed because it is unnecessary and unclear. Regulatory language in the renumbered subsection (d)(2)(C)1. is amended for purposes of nonduplication with regulation in subsection (d)(2)(C) that refers to exit alarms.

Regulation in subsection (d)(2)(D), renumbered from subsection (d)(1)(D), is amended to clarify that the caregiver who operates a licensed FFH, an approved relative, and an approved NREFM may seek approval from their respective licensing or approval agencies for the use of alternative protection for bodies of water. Regulatory language that refers to building officials of the jurisdiction and building permit is repealed because CDSS does not have authority over building permits.

The regulation in subsection (d)(2)(D)1., renumbered from subsection (d)(1)(D)1., is repealed because it refers to building officials of the jurisdiction and CDSS does not have authority over building permits. The regulation in the renumbered subsection (d)(2)(D)1. includes "approved" to clarify that regulations apply to a licensed FFH and an approved relative or NREFM who provides foster care. The usage of the term "approved" is consistent with the caregiver definition in Section 89201, Definitions, which defines caregiver as "the person who is licensed or approved" and is used consistently throughout regulations.

The remainder of the changes in subsections (d) through (d)(2)(D)2. are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing, in response to public comment, and at the Department's discretion, Sections 89387(d)(2)(C) and (D)1. are amended to use the term "home(s)" instead of "residence" and "facilities" to promote normalization in regulations through use of the term "home" and for clarity and consistency. Other non-substantive editorial changes are made for clarity and consistency.

Sections 89387(e) through (g)

Specific Purpose/Factual Basis:

These regulations are amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive grammatical change is made to Section 89387(f) for clarity.

Section 89387(h)

Specific Purpose/Factual Basis:

This section is renumbered from Section 89387.1(a) so that all language regarding "grounds" is consolidated under one section. The regulation is renumbered as a result of CRRRW comment that it is necessary to reorganize related sections and subsections so that regulations are concise and user-friendly. This section falls within the subject of grounds.

Section 89387(h) through (j)

Specific Purpose:

Current subsections (h) and (i) are renumbered to (i) and (j) accordingly and current subsection (j) has been renumbered (a)(8). Nonsubstantive amendments are made for clarity. Subsections (j)(1) and (2) are adopted to clarify criteria for bathrooms that are used by a "child."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulation have been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-like environment

pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641. The adopted regulations are consistent with other regulations that make reference to "as age and developmentally appropriate."

Final Modification:

Following the public hearing and at the Department's discretion, Section 89387(i) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89387(k)

Specific Purpose:

Regulation is amended to clarify that indoor temperature in the home shall be "safe" and comfortable.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation is amended as a result of comment by the CRRRW that it is necessary to further clarify what is "comfortable." The term "safe" provides an additional qualifier for indoor temperature for the home.

Section 89387(l) through (p)

Specific Purpose/Factual Basis:

Regulations have been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing and at the Department's discretion, non-substantive editorial changes were made to Sections 89287(o) and (p) for clarity and consistency.

Section 89387(q)

Specific Purpose/Factual Basis:

Regulation with reference to the operability of windows is renumbered to subsection (a)(6). The regulation is renumbered as a result of comment by the CRRRW that it is necessary to reorganize subsections within this section so that they are more user-friendly.

Section 89387.1

Specific Purpose/Factual Basis:

This section has been repealed. This section is repealed as a result of comment by the CRRRW that it is necessary to reorganize related sections and subsections so that regulations are concise and user-friendly. The repealed section falls within the subject of grounds and has been moved to Section 89387, subsection (h) so that all language regarding "grounds" is consolidated under one section.

Section 89387.2(a)

Specific Purpose/Factual Basis:

This regulation is amended to specify exceptions for the storage of medicines, disinfectants, and cleaning solutions from those for poisons, firearms, and other dangerous weapons. This regulation is necessary for purposes of clarity.

Section 89387.2(b) through (b)(3)(A)

Specific Purpose:

Regulation in subsection (b) is adopted to require the caregiver to use the RPPS to determine if it is age and developmentally appropriate for a "child" to have access to specified items in the home. Regulation in subsection (b)(1) is adopted to clarify that household kitchen knives and appliances do not need to be locked or inaccessible to a "child" who is of sufficient age and maturity to use them. Regulation in subsection (b)(2) is adopted to clarify that medication "shall be stored where inaccessible" to a "child," "except as specified". Current regulation in subsection (b) which reads "Medicines, disinfectants, and cleaning solutions may be accessible to children consistent with the child's Needs and Services Plan or TILP if applicable," is repealed for clarity. Regulation in subsections (b)(3) and (b)(3)(A) are adopted to require that disinfectants and cleaning solutions be stored where they are inaccessible to a "child" with the exception that before allowing a "child" to access these products, the caregiver shall ensure that the "child" knows how to safely handle and use them.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended to normalize the lives and to promote the well being of

children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities; and the caregiver use a reasonable and prudent parent standard to determine day-to-day activities for the "child" pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), (j)(1)(C), and (j)(2) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (b) is adopted as a result of comment by the CRRRW that it is necessary to clarify that the RPPS should apply to this section and that a "child" should have access to items as age- and developmentally appropriate. The regulation provides for less restrictive storage requirements for items in the home, which normalizes life for a "child" and prepares him or her for adulthood.

The regulation in subsection (b)(1) is adopted pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulation specifies items in the home that may be considered dangerous, but are typically used for meal preparation. The regulation is consistent with less restrictive storage requirements for items in the home, which normalizes life for a "child" and prepares him or her for adulthood. The regulation is consistent with regulations Section 89376, Food Service, subsections (d) and (d)(1), which permit a "child" to learn meal preparation and use household kitchen knives and appliances for this activity.

Current regulatory language in subsection (b) is repealed consistent with the requirement that the caregiver use the RPPS in determining whether a "child" shall have access to potentially dangerous items in the home. New regulatory language in subsection (b)(2) is adopted consistent with regulations in the referenced Section 89475.1, Emergency Medical Assistance, Injections, and Self-Administration of Medications.

The regulations in subsection (b)(3) and (b)(3)(A) are adopted pursuant to broad CDSS authority to promulgate regulations for FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulation specifies items in the home that may be considered dangerous, but are typically used for household chores. The regulation is consistent with less restrictive storage requirements for items in the home, which normalizes life for a "child" and prepares him or her for adulthood.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89387.2(b)(3)(A) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89387.2(c)

Specific Purpose:

This regulation is adopted to require the caregiver, in allowing a "child" to have access to and use specified items, to ensure the safety of the "child" and others in the home.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of Welfare and Institutions Code, added to statute by SB 1641.

The regulation is adopted to clarify that allowing a "child" to have access to and use specified items does not supersede the responsibility of the caregiver to ensure health and safety of children.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89387.2(c) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89388(a)

Specific Purpose/Factual Basis:

This regulation is amended to replace "cooperate" with "comply" for purposes of clarity. This regulation is amended as a result of comment by the CRRRW that it is necessary to clarify that the caregiver must "comply," not "cooperate," with all caregiver standards.

Section 89388(b)

Specific Purpose:

This regulation is amended to add "persons who provide, or may provide, care or supervision to a 'child,'" for purposes of clarity.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

This regulation is amended to clarify that the caregiver is prohibited from disseminating any false or misleading statement about persons who provide, or may provide, care or supervision to a "child" during the licensure or approval process.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change was made to Section 89388(b) for clarity and consistency.

Section 89400(a)

Specific Purpose/Factual Basis:

This regulation is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Sections 89405(a) through (a)(1)(J)

Specific Purpose:

Subsection (a) is renumbered from current subsection (b) to move First Aid and Cardiopulmonary Resuscitation (CPR) training requirements to subsection (b) for purposes of clarity. Subsection (a)(1)(H) is amended to add "responsibilities" for purposes of clarity. Subsection (a)(1)(J) is repealed for purposes of clarity and nonduplication with subsection (a)(1)(H).

Factual Basis:

Subsection (a) is renumbered from current subsection (b) to place general training requirements before First Aid and CPR training requirements because the requirements for general training are broader than the requirements for First Aid and CPR training. The regulation is amended so that First Aid and CPR training requirements, a narrower topic than general training, appear after general training requirements. These amendments are intended to make regulations more concise and user-friendly.

The remainder of the changes in subsections (a) through (a)(1)(I) are nonsubstantive and made for purposes of clarity and consistency.

Sections 89405(b) through (b)(2) and Handbook

Specific Purpose:

Subsection (b) is renumbered from current subsection (a) and amended to replace "Any time a child is in the home, at least one of the persons providing regular and routine care and supervision to the child shall have received" with "In addition to the training specified in subsection (a) the caregiver shall complete" for purposes of clarity. Subsection (b)(1) is amended to clarify that in addition to the American Red Cross, a caregiver may obtain First Aid and CPR training through "the American Heart Association, a training program approved by the State Emergency Medical Services Authority (EMSA), or a course offered

by an accredited college or university." Subsection (b)(2) is renumbered from Section 89475, subsection (b)(1) for purposes of clarity and nonduplication and amended to require the caregiver to maintain unexpired first aid and CPR certificates appropriate to the age and needs of a "child" for purposes of clarity. Other nonsubstantive changes are done for clarity and consistency.

Factual Basis:

The regulations are amended pursuant to broad California Department of Social Services (CDSS) authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

Subsection (b) is renumbered from subsection (a) for clarity and ease of use. The regulation is amended to require that the caregiver have First Aid and CPR training regardless of whether a child is currently placed in the home. This requirement ensures that the caregiver meets the First Aid and CPR training requirement at placement. The amendment to clarify that First Aid and CPR training is a separate and additional training requirement is necessary to clarify that caregivers cannot use First Aid and CPR training as part of initial or annual training requirements. The amendment to clarify that the caregiver must "complete" all aspects of the training ensures that the caregiver is fully qualified to provide First Aid and CPR when necessary.

The regulation in (b)(1) is amended to clarify that the caregiver may obtain training from additional vendors, consistent with other Title 22 California Code of Regulations (CCR) Children's Residential facility regulations.

The regulation in (b)(2) is renumbered to place all First Aid and CPR training requirements in one place to avoid duplication between this section and Section 89475, which also refer to First Aid and CPR training requirements. The regulation is amended as a result of comment by the CRRRW. The CRRRW commented that first aid and CPR training should be specific to the "child." The amendment clarifies that certificates of completion must be appropriate to the "child" because the content of First Aid and CPR training can vary based on the age of the "child."

The remainder of the changes in these subsections are nonsubstantive and made for purposes of clarity and consistency.

Section 89410(a) and (b)

Specific Purpose/Factual Basis:

These subsections are amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Section 89410(c)

Specific Purpose:

This section is adopted to clarify that the licensing agency must approve an increase in capacity for the FFH before a social worker or placing agency may place more "children" in the home than the capacity stated on the FFH license.

Factual Basis:

This regulation is adopted pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

This regulation is adopted as a result of comment by the CRRRW that it is necessary to clarify that a FFH should not go over capacity if not approved by CCLD prior to the placement of a "child." The CRRRW indicated that there have been occasions when social workers place "children" in a FFH, knowing that the home is over capacity and state that they will seek CCLD approval to go over capacity. The caregiver may believe that the social worker has the authority to permit the FFH to go over capacity. CDSS agrees that a family may be placed at risk for accepting a "child" that the home cannot accommodate.

Sections 89410(d) and (e)

Specific Purpose/Factual Basis:

As a result of the adoption of a new subsection (c), current subsection (c) is renumbered to subsection (d) and amended for clarity, consistency and nonduplication. Subsection (e) is renumbered from current subsection 89228(d) and amended for clarity and consistency.

Section 89420(a)

Specific Purpose:

This subsection is amended to replace the term "disabled" with "non-ambulatory" for clarity.

Factual Basis:

The regulation is amended as a result of comment by the CRRRW that it is necessary to use the term "non-ambulatory" rather than "disabled." The amended regulation is consistent with State Fire Marshal statutes that specify safeguards for residents in a home who are "non-ambulatory" and may need additional assistance in the event of a fire. These statutes include, but are not limited to, sections 13113, 13131, 13143, and 13143.6 of the Health and Safety Code. The term "disabled" may refer to a "child" who has a disability that may not cause them to be non-ambulatory. A "child" who is non-ambulatory may be unable to escape a fire in the FFH without assistance. The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Section 89420(a)(1) and Handbook are adopted in response to public comment that it is necessary to clarify fire clearance requirements for homes caring for infants. Handbook is included to reference language specifying that homes with a capacity of six or fewer children two years of age or younger are not subject to fire clearance requirements pursuant to section 13143 of the Health and Safety Code.

Section 89420(b)

Specific Purpose:

Subsection (b) is repealed for purposes of clarity and nonduplication with subsection (a). A new subsection (b) is adopted to require a caregiver that is licensed for a capacity of more than six children who are ambulatory or that requests an increase in capacity to more than six children who are ambulatory to obtain an appropriate fire clearance.

Factual Basis:

The existing regulation in subsection (b) is repealed to avoid duplication. CDSS finds that the regulations in subsections (a) and (b) are similar in intent, but that (a) is more comprehensive and makes repealed language unnecessary.

The regulation adopted in subsection (b) is necessary to be consistent with Health and Safety Code section 13143, subsection (b), which does not exempt FFH with more than six children from the requirement to have an appropriate fire clearance, regardless of ambulatory status.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended for clarity and consistency.

Section 89421, et seq.

Specific Purpose/Factual Basis:

These regulations have been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Sections 89465(a) through (b)(2)(A) and (d)

Specific Purpose/Factual Basis:

These regulations have been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulations meet the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). They are also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Sections 89465(c) through (c)(2)

Specific Purpose:

Subsection (c) is amended for purposes of clarity. Subsections (c)(1) and (c)(2) are adopted as regulation to specify that the licensing agency shall provide the caregiver with a written explanation of the need for any additional physician reports and what written information is needed from the caregiver.

Factual Basis:

These regulations are pursuant to broad CDSS authority to promulgate regulations for licensed FFHs in sections 1530.5, and 1531 of the Health and Safety Code. These regulations are necessary to clarify and promote caregiver compliance with regulations. The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity and consistency.

Section 89465(e)

Specific Purpose:

This subsection is adopted to clarify that occasional short-term babysitters and alternative caregivers are exempt from the requirements of this section.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been adopted to normalize the lives and to promote the well being of children in foster care. The adopted regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" and be permitted to maintain the least restrictive and most family-like environment pursuant to section 361.2, subsections (j)(1)(A) and (j)(1)(B) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation is adopted as a result of comment by the CRRRW that it is necessary to clarify that the regulations in this section do not interfere with the ability of the caregiver to use an occasional short-term babysitter. An occasional short-term babysitter used by the caregiver is not required to have the health screening required by this section, consistent

with section 362.04, subsection (e) of the Welfare and Institutions Code, added to statute by SB 358 (Chapter 628, Statutes of 2005).

The regulation extends the exemption permitted for an occasional short-term babysitter to an alternative caregiver. CDSS provides for an alternative caregiver in regulations to provide a broader range of flexible options for providing care and supervision to normalize the operation of a FFH for the caregiver, who may wish to go on vacation, but requires guidelines for arranging alternate care. This also normalizes life and provides stability for the "child" by allowing them to remain in the FFH in the absence of the caregiver.

Section 89468(a)

Specific Purpose/Factual Basis:

This subsection is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). The regulation is also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89468(b) through (b)(10)

Specific Purpose:

Subsection (b) et seq., is repealed for purposes of clarity. A new subsection (b) is adopted to require that if the caregiver does not receive the Health and Education Passport for a "child" and the written plan identifying the specific needs and services of the "child" when the "child" is placed, the caregiver shall ask the placement social worker the name and age of the "child" and specified questions in the "Pre-Placement Questionnaire." Subsections (b)(1) through (10) are adopted to require that the caregiver ask specified Pre-Placement Questionnaire questions.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

Existing regulations in subsection (b) are repealed for clarity because the term "Needs and Services Plan" has been replaced by the term "written plan identifying the specific needs and services of the child" for purposes of clarity and ease of use. The use of the term "written plan identifying the specific needs and services of the child" in this subsection is consistent with the definition of this term in Section 89201, Definitions.

Regulations are adopted in subsections (b) and (b)(1) through (10) as a result of comment by the CRRRW. The CRRRW commented that it is necessary to clarify what recourse the caregiver has to obtain essential information about the "child" when the placement agency does not provide them with required documents about the "child" at the time of placement. The Pre-Placement Questionnaire is necessary to ensure that the caregiver has information specific to the child at placement to ensure that they will be able to meet the needs of the child and to then provide adequate care and supervision.

Section 89468(c)

Specific Purpose:

This subsection is adopted to permit the caregiver to use the Pre-Placement Questionnaire (LIC 9225) or any other written format developed by the caregiver, to obtain information based on the questionnaire.

Factual Basis:

CDSS has broad authority to promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The reference to the Pre-Placement Questionnaire and form number are consistent with adding a new form referenced in regulation. CDSS provides the caregiver with the flexibility to use this form or any other written format because the circumstances under which a "child" is placed in a FFH may vary and the caregiver may not have the actual form immediately available to use.

Sections 89468(d) and (d)(1)

Specific Purpose:

These subsections are adopted to clarify that the caregiver must use pre-placement information to determine if they can meet the needs of a "child" before the "child" is placed in the FFH.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted for clarity, to normalize the lives and to promote the well being of children in foster care. The adopted regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

These regulations are adopted as a result of CRRRW comment that it is necessary to clarify that the caregiver should review information about a "child" before placement to ensure a proper match and avoid the "child" being unnecessarily moved. CDSS agrees that important information about the "child," such as behavioral issues, may be of concern to the caregiver and is ideally considered up front so that the potential trauma of multiple placements may be avoided.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89468(d)(1) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89468(e) through (f)(2)

Specific Purpose/Factual Basis:

CDSS has broad authority to promulgate regulations for licensed FFH in sections 1530, 1530.5, and 1531 of the Health and Safety Code.

These subsections are renumbered from current subsections (c) through (d)(2) respectively. Renumbered subsection (f)(1) is amended to change the term "authorized representative" with "person or agency responsible for placing the child" for purposes of clarity as a result of comment by the CRRRW. The CRRRW commented that it is necessary to clarify "authorized representative" in certain situations. The amended regulation clarifies that the caregiver must inform the "person or agency responsible for placing the child" if the home cannot meet the needs of the "child." "Person or agency responsible for placing the child" is more transparent terminology for identifying who is authorized by law to act on behalf of a "child." A "child" may be placed in a foster home voluntarily by a parent, legal guardian, conservator, or public placement agency. The remainder of the changes in subsections (e) through (f)(2) are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Following the public hearing and at the Department's discretion, these sections are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89468(g)

Specific Purpose/Factual Basis:

This regulation has been renumbered from subsection (e) to subsection (g) to accommodate the adoption of regulation in subsection (d). Regulatory language that is not applicable and unnecessary is repealed. The phrase "portion of the case plan provided by the placing social worker that pertains to care of the child" is repealed because the caregiver does not always receive the case plan, which is a court document. The caregiver typically receives a "written plan identifying the specific needs and services of the child," Health and Education

Passport, and other documents that provide information about a "child" from the placement social worker. The remaining changes in the subsection are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89468(h) and (h)(1)

Specific Purpose:

These subsections are renumbered from current subsections (f) and (f)(1), respectively. Regulation in subsection (h) is amended to clarify that the caregiver shall provide a "child" and his or her authorized representative with an orientation to personal rights as specified in Health and Safety Code section 1530.91. Regulation in subsection (h)(1) is amended to adopt the form number for Foster Youth Rights (PUB 396). The remainder of the changes in are nonsubstantive and made for purposes of clarity and consistency.

Factual Basis:

The regulation in subsection (h) is amended for clarity consistent with statute in section 1530.91, subsections (a) and (b) of the Health and Safety Code. The amended regulation also reinforces regulation in Section 89372, Personal Rights, which refers to a "child" being advised about personal rights when they are placed in the home.

The regulation in subsection (h)(1) is amended to adopt the form number for Foster Youth Rights (PUB 396) consistent with the listing of this form as a current form that applies to FFH in Section 89202, Definitions – Forms. This publication is also listed on the CCLD website as a current form that applies to the FFH licensing category.

Final Modification:

Following the public hearing and at the Department's discretion, non-substantive editorial changes were made for clarity and consistency.

Sections 89469(a) through (a)(2)

Specific Purpose:

Subsection (a)(2) is adopted to require that a medical assessment for a "child" shall include the results of an examination for communicable tuberculosis (TB) and other contagious or infectious diseases. Other nonsubstantive amendments are made to these subsections for clarity and consistency.

Factual Basis:

The regulation in subsection (a)(2) is necessary to be consistent with information received from the California Department of Public Health (CDPH) Tuberculosis Control Branch that explains that a child's medical assessment should include results of a tuberculosis (TB) screen. The adopted regulation is consistent with Title 22, Division 6, Chapter 1, California Code of Regulations (CCR) General Licensing Requirements, Section 80069(c)(1). The remainder of the amendments to these subsections are nonsubstantive and made for purposes of clarity and consistency.

Section 89469(b)

Specific Purpose/Factual Basis:

This subsection is amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c). The regulation is also consistent with the requirements of style pursuant to section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Sections 89475(a) and (a)(1)

Specific Purpose:

Subsection (a) is amended to clarify that the caregiver shall administer family health care to a "child." Regulation in subsection (a)(1) is amended to clarify that the caregiver shall ask the medical professional for written instructions.

Factual Basis:

CDSS has broad authority to promulgate regulations for licensed FFH in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The amended regulation in subsection (a) is necessary to clarify that regulations authorize the caregiver to administer or supervise the administration of family health care to a "child."

The amended regulation in subsection (a)(1) clarifies that it is the caregiver's responsibility to obtain, and not the medical professional's responsibility to provide, adequate and practical written instructions for follow-up care of the "child." CDSS does not have jurisdiction over the manner in which medical professionals provide the caregiver with instructions for care.

The remainder of the changes in subsections (a) and (a)(1) are nonsubstantive and made for purposes of clarity and consistency.

Sections 89475(b) through (b)(2)

Specific Purpose:

Regulation in subsection (b) is repealed. Regulation in subsection (b)(1) is renumbered to Section 89405, subsection (b)(2). Regulation in subsection (b)(2) is renumbered to (b) and amended for clarity and consistency.

Factual Basis:

The repeal of regulation in subsection (b) is necessary for nonduplication as this regulation appears in almost verbatim text in Section 89405, Training Requirements. Regulation in subsection (b)(1) is renumbered to that section to place it with the requirement that the caregiver complete first aid and CPR training. The remainder of the changes in these subsections are nonsubstantive and made for purposes of clarity and consistency.

Sections 89475(c) through (c)(9)

Specific Purpose:

Regulation in subsection (c)(1)(A) is adopted to permit a "child" to self-administer medication or injections if their physician gives permission. Regulation in subsection (c)(4) is amended to clarify that prescription medication must also be administered as "directed in writing." Regulation in subsection (c)(5) is amended to clarify that non-prescription medication must also be administered as "directed on the label." Regulation in subsection (c)(6) is amended to clarify that the administration of "prescription" PRN medication must be documented. Regulation in subsection (c)(8) is adopted to require that a "child" not be required to take psychotropic medication without a court order as specified. Regulation in subsection (c)(9) is adopted to require the caregiver to provide emergency medical assistance and injections as specified.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child"; the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (c)(1)(A) is adopted as a result of CRRRW comment that it is necessary to clarify that a "child" may be allowed to handle and store their own medications with appropriate training and supervision. The CRRRW indicates that doing so will

encourage a "child" to be independent. The adopted regulation is also consistent with, and references regulation in Section 89475.1, subsection (f)(1), Emergency Medical Assistance, Injections, and Self-Administration of Medication.

The regulations in subsection (c)(4), (c)(5), and (c)(6) are amended as a result of comment by the CRRRW that it is necessary to clarify how the caregiver may administer prescription and non-prescription medications to a "child" and which medications must be documented when they are administered. The regulations are amended to clarify the instructions the caregiver must follow when administering prescription and nonprescription medication and repeal the requirement that non-prescription medications be documented.

The regulation in subsection (c)(8) is adopted consistent with statute in sections 369.5, subsection (a) and 739.5, subsection (a) of the Welfare and Institutions Code. Section 369.5, subsection (a) of the Welfare and Institutions Code specifies that psychotropic medication cannot be administered to a "child" who is a dependent of the court without a court order. Section 739.5, subsection (a) of the Welfare and Institutions Code, added to statute by AB 1514 (Chapter 120, Statutes of 2007), specifies that psychotropic medication cannot be administered to a "child" who is a ward of the court without a court order.

The regulation in subsection (c)(9) is adopted as a result of comment by the CRRRW that it is necessary to clarify that the caregiver may administer emergency medical assistance and injections to a "child" and is consistent with statute in section 1507.25 of the Health and Safety Code, added to statute by AB 1116 (Chapter 637, Statutes of 2005). This statute requires regulations to authorize designated care providers who are not licensed health care providers to administer emergency medical assistance and/or injections for specific reasons to a "child" in placement, if they are trained by a licensed health care professional practicing within his or her scope of practice.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89475(c)(7) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial and renumbering changes are made.

Section 89475.1

Specific Purpose:

A new section, 89475.1, Emergency Medical Assistance, Injections, and Self-Administration of Medications, is adopted to implement statute and require the caregiver to provide this care as specified.

Factual Basis:

The adoption of this section is necessary to implement statute in section 1507.25 of the Health and Safety Code, mandated by AB 1116 (Chapter 637, Statutes of 2005). It is the intent of CDSS to provide this section as regulation to specify how the caregiver must provide for emergency medical assistance, injections, and self-administration of medications in foster care and the caregiver's responsibilities with respect to this care.

This section is consistent with and references statute in section 1507.25 of the Health and Safety Code, which requires regulations to authorize designated care providers who are not licensed health care providers to administer emergency medical assistance and/or injections for specific reasons to a "child" in placement, if they are trained by a licensed health care professional practicing within his or her scope of practice.

These regulations are adopted to require that the caregiver be trained to provide the care described in this section, permit the caregiver to provide specified medical assistance, and require the caregiver to ensure that specified medical assistance is documented by those who are authorized by statute to perform this care. The regulations clarify that those who assist with administering injections or glucose testing are required to document the date, time, dose or results and maintain this documentation in the record for the "child."

The regulations in subsections (f) and (f)(1) through (3) are adopted to permit a "child" to self-administer medication or injections if their physician gives permission, unless prohibited by court order. These regulations also require the caregiver to ensure that a "child" knows appropriate procedures for self-administration of medication and injections. The regulations are adopted as a result of CRRRW comment that it is necessary to clarify that a "child" may be allowed to handle and store their own medications with appropriate training and supervision. The CRRRW indicates that doing so will encourage the "child" to be independent.

The regulation in subsection (g) is adopted as a result of comment by the CRRRW that it is necessary to clarify that the caregiver may administer psychotropic medication to a "child" only if permitted by court order and is consistent with statute in sections 369.5, subsection (a) and 739.5, subsection (a) of the Welfare and Institutions Code. Section 369.5, subsection (a) of the Welfare and Institutions Code specifies that psychotropic medication cannot be administered to a "child" who is a dependent of the court without a court order. Section 739.5, subsection (a) of the Welfare and Institutions Code, added to statute by AB 1514 (Chapter 120, Statutes of 2007), specifies that psychotropic medication cannot be administered to a "child" who is a ward of the court without a court order.

Section 89475.2(a) through (a)(2)(A)

Specific Purpose:

Regulations with regard to postural supports and protective devices are renumbered from Section 89372, subsections (c)(20)(A) through (F)2., as noted, to this section on postural supports and protective devices for purposes of clarity.

Regulation in subsection (a) is adopted to clarify that except for postural supports and protective devices as provided in this section, the caregiver shall not restrain or use any restraining devices on a "child." Regulations are amended in subsections (a)(1) through (a)(2)(A) to clarify how postural supports and protective devices may be used and what they include.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted and amended for clarity, to normalize the lives and to promote the well being of children in foster care. The adopted and amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (a) is adopted as a result of CRRRW comment that it is necessary to clarify the use of restraints. The regulation clarifies that the caregiver may only use specified postural supports and protective devices to restrain a "child." This regulation is consistent with regulation in section 89372, subsection (a)(8), that states that a "child" is "Not to be restrained or placed in any restraining device other than as specified."

The regulation in subsection (a)(1) is amended to repeal language which is adopted in subsection (a)(1)(A) for purposes of clarity. The regulation in subsection (a)(1)(A) is amended to clarify that postural supports may include braces, spring release trays, or soft ties.

The regulation in subsection (a)(2) is amended to repeal language which is adopted in subsection (a)(2)(A) for purposes of clarity and to clarify that protective devices may also be used "to provide assistance with" mobility. The regulation in subsection (a)(2)(A) is amended to repeal language which is adopted in subsection (a)(2) for purposes of clarity and to clarify that protective devices may include physician-prescribed or recommended helmets, elbow guards, mittens, and a bed rail that extends half the length of the bed. The regulation specifies "physician- prescribed or recommended" to qualify that protective devices must be used in accordance with instructions from a physician.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity and consistency.

Section 89475.2(b) through (d)

Specific Purpose:

Regulations are adopted in subsections (b) and (b)(1) and (2) to require the caregiver to contact the licensing agency before accepting a "child" who requires postural supports or protective devices and if a "child" develops a condition which requires the use of postural supports or protective devices. Regulation in subsection (c), renumbered from subsection 89372(c)(20)(B), is amended to clarify how the caregiver must seek approval to use postural supports and protective devices. Regulation in subsection (c)(1), renumbered from

subsection 89372(c)(20)(F)1., is amended to require consent for the use of postural supports and protective devices from the "person or agency responsible for placing the child." Regulation in subsection (d), renumbered from subsection 89372(c)(20)(D), is amended to clarify that the licensing "or approval" agency "may" grant conditional or limited approvals to use postural supports or "protective devices."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been adopted and amended for clarity, to normalize the lives and to promote the well being of children in foster care. These regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulations in subsections (b) and (b)(1) and (2) are adopted to clarify timelines for the caregiver to seek approval from the licensing or approval agency for the use of postural supports or protective devices. The regulations clarify that a caregiver must have prior approval from the licensing or approval agency before accepting placement of a "child" who requires postural supports or protective devices. The regulations also clarify that a caregiver must have approval to continue operating their home under their current license or approval if a "child" requires postural supports or protective devices after placement. A reevaluation of license or approval may be necessary to confirm that the caregiver's home remains suitable to meet the needs of the "child" and that the caregiver is able to continue providing care for other children in the home.

The regulation in subsection (c) is amended to clarify that the caregiver must seek approval to use postural supports and "protective devices" in writing and repeal existing language that is unnecessary.

The regulations in subsections (c) and (d) are amended to use the term "licensing or approval agency" to clarify that regulations apply to a licensed FFH and an approved relative or non-relative extended family member (NREFM) who provides foster care. This term is consistent with the caregiver definition in Section 89201, Definitions, which defines caregiver as "the person who is licensed or approved" and is used consistently throughout regulations.

The regulation in (c)(1) is amended to repeal existing language that duplicates language in subsection (c) and is consistent with the use of the "person or agency responsible for placing the child" in place of authorized representative in specific circumstances for purposes of clarity.

The regulation in subsection (d) is amended to use the term "licensing or approval agency" to clarify that regulations apply to a licensed FFH and an approved relative or non-relative extended family member (NREFM) who provides foster care. This term is consistent with the caregiver definition in Section 89201, Definitions, which defines caregiver as "the person who is licensed or approved" and is used consistently throughout regulations. It is also amended to make the regulation inclusive of protective devices.

The remainder of the changes in these subsections are nonsubstantive and made for purposes of clarity and consistency.

Final Modification:

Following the public hearing and at the Department's discretion, Sections 89475.2(b)(2) and (c)(1) are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Article 5, et seq.

Specific Purpose:

Regulations are amended in Article 5, et seq. to replace "authorized representative" with "person or agency responsible for placing the child" and replace "in-home health care provider," "employee," and "personnel" with "caregiver," "any other person who provides care to a child with special health care needs," and "additional help" where appropriate for purposes of clarity and consistency.

Factual Basis:

It is necessary to use the terms "caregiver," "any other person who provides care to a child with special health care needs," and "additional help" to clarify that regulations apply to the caregiver and anyone that they have in the home to provide assistance with caring for a child with special health care needs. Regulations also clarify that additional help is not "household" help, which could be construed as housekeepers and others who provide other support in the home, but do not provide direct care to children.

The term "person or agency responsible for placing the child" is used as a result of comment by CRRRW. The CRRRW commented that it is necessary to clarify "authorized representative" in certain circumstances. "Person or agency responsible for placing the child" is more transparent terminology for identifying who is authorized by law to act on behalf of a "child." A "child" may be placed in a foster home voluntarily by a parent, legal guardian, conservator, or public placement agency.

Sections 89510.1(b) et seq.

Specific Purpose:

Subsection (b) is newly adopted to clarify that a specialized FFH shall not care for more than two children with or without special health care needs as provided in specified statute. Regulations in subsections (b)(1)(A) through (C) are amended to clarify the conditions under which a third child may be accepted into a specialized FFH. Regulation in subsection (b)(1)(A)1.b is repealed. Current regulation in subsection (b) is also repealed.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation newly adopted in subsection (b) is intended to clarify section 17732 of the Welfare and Institutions Code, which specifies that no more than two, and with exceptions, three foster care children, may live in a specialized FFH. This regulation is also a result of comment by the CRRRW that it is necessary to clarify that a caregiver may care for a "child" with special health care needs as well as a "child" without special health care needs.

The regulations in subsections (b)(1)(A) through (C) are amended for clarity. The regulations meet the "clarity" standard of the APA, Government Code section 11349, subsection (c), the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

The regulation in subsection (b)(1)(A)1.b. is repealed to combine (b)(1)(A)1.a. with (b)(1)(A)1.b. for clarity and ease of use.

Existing regulation in subsection (b) is repealed because it is unclear with regard to the children that may be cared for in a specialized FFH.

Final Modification:

Following the public hearing and at the Department's discretion, these sections are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial and grammatical changes are made.

Section 89510.2(a) and (a)(1)

Specific Purpose/Factual Basis:

Regulation in subsection (a) is amended to repeal "while caring for children with special health care needs" for purposes of clarity.

The regulation is consistent with broad CDSS authority to implement statute and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulation is amended clarify that a caregiver who operates a specialized FFH may not have any day care, other residential, or health care home license for the same premises regardless of whether they are caring for children in the home.

The remainder of the changes to subsections (a) and (a)(1) are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89510.2(a)(1) is amended to repeal "foster family home" since the reference to it is not necessary.

Section 89565.1(a)

Specific Purpose:

This regulation is amended to clarify that the caregiver and any other person who provides specialized in-home health care must provide this care as specified in Welfare and Institutions Code 17731, subsections (c)(3) and (5) and comply with Section 89465, Caregiver Requirements and this section.

Factual Basis:

This regulation is necessary to be consistent with statute in section 17731, subsections (c)(3) and (5) of the Welfare and Institutions Code, referenced in the amended regulation. This statute specifies that there must be a county plan to care for "children" with special health care needs and caregivers must be trained to provide care.

The regulation references Section 89465, Caregiver Requirements, which provides the requirements that the caregiver and additional help must meet to provide care. These requirements are the same for a FFH and specialized FFH, except that the caregiver and additional help in a specialized FFH must receive training to provide specialized in-home health care.

The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Section 89565.1(b) through (b)(2)

Specific Purpose:

Regulations in subsections (b), (b)(1), and (b)(2) are renumbered from (a)(1), (a)(1)(A), and (a)(1)(B) respectively for the purposes of clarity. Current regulations in subsections (b) and (b)(1) through (b)(2)(B) are repealed.

Factual Basis:

The amended regulations clarify that in addition to meeting the requirements of subsection (a), the caregiver and other caregivers in the specialized FFH must receive training to care for children with special health care needs. This amendment to regulations also clarifies that if the caregiver and other caregivers are a licensed health care professional or have other medical qualifications or expertise, they are exempt from training requirements.

The remainder of the changes to subsections (b) and (b)(1) and (2) are nonsubstantive and renumbered for purposes of clarity.

Existing regulations in subsections (b) and (b)(1) through (b)(2)(B) are repealed for the purposes of nonduplication. These regulations duplicated regulations in Section 89465, Caregiver Requirements.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89565.1(b) and (b)(2) are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89566 Title

Specific Purpose/Factual Basis:

Section title is amended to repeal reference to "personnel" and adopt reference to "additional" for purposes of clarity.

Section 89566(a) and (a)(1) through (a)(2)(B)

Specific Purpose:

Regulations in these subsections are adopted, amended or repealed, as shown, to clarify that the caregiver shall have documentation verifying completion of training "or" exemption from training, and that documentation of exemption from training shall include a copy of a valid license or certificate "and" written documentation verifying exemption from training.

Factual Basis:

These regulations are consistent with broad CDSS authority to implement statute and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulations are a result of CRRRW comment that it is necessary to clarify the training documentation that the caregiver must have on file in the home. These regulations have been reorganized without substantively changing the meaning of the regulations for purposes of clarity.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, renumbered Section 89566(a)(2)(B) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Sections 89566(b) through (b)(7)

Specific Purpose:

Regulation in subsection (b)(2) is amended to replace driver's license "number" with a "copy of" the driver's license. Regulation in subsection (b)(3) is amended to replace date "of employment" with date "the person started providing additional help in the home." Regulation in subsection (b)(4) is repealed. Regulation in subsection (b)(7) is amended to replace "termination" date "if no longer employed in the home" with date "the person last worked, if no longer working in the home." Regulations are renumbered as necessary. Other nonsubstantive changes are made for clarity and consistency.

Factual Basis:

These regulations are consistent with broad CDSS authority to implement statute and promulgate regulations for licensed FFHs in sections 1530, 1530.5, and 1531 of the Health and Safety Code. The regulation in subsection (b)(2) clarifies that the caregiver must obtain a copy of the driver's license, to provide additional proof that the license is valid. The regulation in subsection (b)(3) and (b)(7) clarify that the home does not have employees. The regulation in subsection (b)(4) is repealed because the home does not have employees, and because the home may utilize occasional short-term babysitters that may be under 18 years of age, consistent with Section 89378, Responsibility for Providing Care and Supervision.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity.

Section 89566(c)

Specific Purpose/Factual Basis:

This regulation is amended to replace "Sections 89565.1, (b) and (b)(1)" with "Section 89465, subsection (b)(1)." This amendment is necessary because Section 89565.1, subsections (b) and (b)(1) have been repealed for nonduplication with Section 89465, which contains the referenced requirements in subsection (b)(1).

Section 89566(d) through (e)

Specific Purpose/Factual Basis:

These regulations have been amended by making nonsubstantive changes for purposes of clarity for ease of use. The amended regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Following the public hearing and at the Department's discretion, a non-substantive editorial change was made to renumbered Section 89566(d)(1) for clarity and consistency.

Section 89569.1(a) through (a)(7)

Specific Purpose:

Regulation in subsection (a) is amended to require that the caregiver maintain a copy of the individualized health care plan for the "child," for purposes of clarity. Regulation in subsection (a)(7) is amended to include the "Pre-Placement Questionnaire." Other nonsubstantive amendments are made to these sections for clarity and consistency.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (a) clarifies that the caregiver must maintain, as well as obtain, the individualized health care plan for the "child." The individualized health care plan is an additional requirement for specialized FFH, which care for the child with special health care needs. These FFH must maintain the individualized health care plan for the "child" in addition to the records specified in section 89370, Children's Records.

The regulation in subsection (a)(7) is amended to include "Pre-Placement Questionnaire" as a result of comment by the CRRRW that it is necessary to clarify what recourse the caregiver has to obtain essential information about the "child" when the placement agency does not provide them with required documents about the "child" at the time of placement. The regulation is consistent with regulations in Section 89468, Admission Procedures, which require that the caregiver obtain pre-placement information for a "child."

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, these sections are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. A non-substantive editorial change is made to Section 89569.1(a)(7) for clarity and consistency.

Sections 89569.1(b) and (b)(1)

Specific Purpose:

Regulation in subsection (b)(1) is adopted to require that the requirement that the caregiver maintain an updated copy of the individualized health care plan for the "child" for purposes of clarity and to ensure the health and safety of the "child."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulation have been adopted and amended for clarity, to normalize the lives and to promote the well being of children in foster care. The adopted and amended regulations are consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (b)(1) clarifies that the caregiver must maintain, as well as obtain, an updated copy of the individualized health care plan for the "child." The specialized FFH must maintain the individualized health care plan for the "child" in addition to the records specified in section 89370, Children's Records.

The remainder of the changes to these are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, Section 89569.1(b) is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. A non-substantive grammatical change is made for clarity and consistency.

Section 89569.1(c)

Specific Purpose/Factual Basis:

This regulation has been amended by making nonsubstantive changes for purposes of clarity for ease of use. The regulation meets the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c) and is consistent with the requirements of style pursuant to section 11343.1 of the Government Code.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89569.1(d)

Specific Purpose:

Regulation has been amended to include the "Pre-Placement Questionnaire."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirement that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child," as required by section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation is amended to include "Pre-Placement Questionnaire" as a result of comment by the CRRRW that it is necessary to clarify what recourse the caregiver has to obtain essential information about the "child" when the placement agency does not provide them with required documents about the "child" at the time of placement. The regulation is consistent with regulations in Section 89468, Admission Procedures, which require that the caregiver obtain pre-placement information for a "child."

"Needs and Services Plan" is repealed and "written plan identifying the specific needs and services of the child" is adopted to clarify the term used throughout the regulations.

The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial changes are made for clarity and consistency.

Section 89570.1

Specific Purpose/Factual Basis:

This section is repealed because it is superseded by Section 89361, Reporting Requirements, which contains more detailed regulations relevant to this section, for clarity. Some regulations from this section have been folded into and are consistent with regulations in Sections 89510.1, Limitations on Capacity for Specialized Foster Family Homes and 89569.1, Individualized Health Care Plans for Specialized Foster Family Homes. The deletion of this section avoids duplication of these regulations and references to regulations that are consistent with one another.

Section 89572.2(a) through (a)(2)(A)3.

Specific Purpose:

Regulation in subsection (a) is amended to repeal "with the following modifications" and clarify that a child with special health care needs is afforded additional personal rights. Regulation in subsection (a)(1) is amended to repeal "Section 89372(c)(8) shall not apply to children with special health care needs." Regulation in subsection (a)(2) is amended to repeal "Section 89372(c)(19), shall not apply to children with special health care needs." Regulation in subsection (a)(2)(A) is amended to repeal "such as, but not limited to, intravenous therapy or catheterization procedures."

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsection (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulations in subsections (a), (a)(1), and (a)(2) are amended to repeal regulatory language as necessary to restore personal rights to "children" who have special health care needs. This amendment is a result of CRRRW comment that some personal rights were unintentionally stated to not apply to these children. The amended regulations clarify how the personal rights in Section 89372, Personal Rights, apply to a child with special health care needs.

The regulation in subsection (a)(2)(A) is amended to repeal language that is unclear and unnecessary.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, these sections are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. A non-substantive editorial change is made to Section 89572.2(a) for clarity and consistency.

Section 89572.2(a)(2)(B)

Specific Purpose/Factual Basis:

This regulation is amended to renumber the reference to postural supports and protective devices to Section "89475.2" and appropriate subsections within that section. Postural supports and protective devices were formerly in Section 89372, Personal Rights and have

been renumbered to a separate section in Article 4 on postural supports and protective devices. "Bed rails" is repealed for purposes of clarity and duplication with Section 89475.2. The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. A non-substantive editorial change is made for clarity.

Section 89587.1(a) through (a)(1)(A)

Specific Purpose:

Regulation in subsection (a) is amended to clarify that areas in the home, "including, but not limited to" specified areas must be large enough to accommodate medical equipment used by a child with special health care needs.

Factual Basis:

Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), these regulations have been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulations are consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child;" the caregiver be permitted to maintain the least restrictive and most family-like environment; and the "child" be permitted to engage in reasonable, age-appropriate day-to-day activities pursuant to section 361.2, subsections (j)(1)(A), (j)(1)(B), and (j)(1)(C) of the Welfare and Institutions Code, added to statute by SB 1641.

The regulation in subsection (a) is amended to clarify that there could be additional areas that exist in the home that are not specified in regulation that may require modification so that a child with special health care needs has access to them.

The remainder of the changes to these subsections are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, these sections are amended to refer more generally to "a child" rather than to "the child" for clarity and consistency. Other non-substantive editorial changes are made.

Section 89587.1(b)

Specific Purpose/Factual Basis:

Regulation is amended to replace "minor" with "child" for purposes of clarity and consistency with the use of the term used throughout the regulations.

The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

Section 89587.1(c)

Specific Purpose/Factual Basis:

This regulation is amended to clarify that "a monitoring device to alert the caregiver" may also be used. Based on the Legislative intent specified in SB 1641 (Chapter 388, Statutes of 2006), this regulation has been amended for clarity, to normalize the lives and to promote the well being of children in foster care. The amended regulation is consistent with the requirements that the caregiver be able to meet the day-to-day health, safety, and well-being needs of the "child" pursuant to section 361.2, subsections (j)(1)(A) of the Welfare and Institutions Code, added to statute by SB 1641. The regulation provides an additional way for the caregiver and any other adult providing care to monitor a child with special health care needs.

The remainder of the changes to this subsection are nonsubstantive and made for purposes of clarity.

Final Modification:

Following the public hearing and at the Department's discretion, this section is amended to refer more generally to "a child" rather than to "the child" for clarity and consistency.

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill (AB) 408 (Chapter 813, Statutes of 2003) which added Welfare and Institutions Code section 362.05.
- AB 1116 (Chapter 637, Statutes of 2005) which added Health and Safety Code section 1507.25.

- AB 1514 (Chapter 120, Statutes of 2007) which added Welfare and Institutions Code section 739.5.
- AB 2096 (Chapter 483, Statutes of 2008) which amended Welfare and Institutions Code sections 362.05 and 727.
- Senate Bill (SB) 358 (Chapter 628, Statutes of 2005) which added Welfare and Institutions Code section 362.04.
- SB 500 (Chapter 630, Statutes of 2005) which amended Welfare and Institutions Code sections 11400 and 16501.25.
- SB 1641 (Chapter 388, Statutes of 2006) which amended Health and Safety Code section 1536.2 and Welfare and Institutions Code section 361.2.
- California Department of Public Health (CDPH) Tuberculosis (TB) Control Branch, Guidelines for Tuberculosis Testing for Children in Foster Care.
- Commercial Practices, 16 C.F.R. section 1513.6.
- Comments of County Welfare Directors Association (CWDA).
- Comments of Legal Advocates for Permanent Parenting (LAPP).
- Consolidated Comments of the Children's Residential Regulations Review Workgroup
- Correspondence from Childhelp on behalf of "Chelsea."
- Wilber et al., Child Welfare League of America Best Practice Guidelines for Serving LGTB Youth in Out-of-Home Care (2006).

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on June 17, 2009 in Sacramento, California. No oral testimony was received, however, written testimony was received from the following during the 45-day comment period from May 1, to 5:00 p.m. June 17, 2009:

- Luisa Lamarche, MPA
 - Verne Teyler, Executive Director, Hosanna Homes, Castro Valley, CA
 - Regina Martin
 - Dennis Schieffer, Administrator, Valley Oaks FFA
 - Chuck Adkins, Assoc. Ex. Director, Koinonia Family Services, Inc.
 - Joan Femino, MSW
 - Nena Panza, Executive Director, Ready for Life Foster Family Agency
 - Patty McCarthey, Children's Hope Foster Family Agency
 - Jerry Johnson, Coordinator, California Coalition of Foster Family Agencies
 - Barbara Knight, MS, Agency Social Worker, Safe Harbor Family Services, Inc.
 - William C. Meenk, MA, Executive Director, Safe Harbor Family Services, Inc.
 - Donna Newman, Administrator, Safe Harbor Family Services, Inc., Modesto, CA
 - Diana Boyer, Sr. Policy Analyst, County Welfare Directors Association, Sacramento, CA
 - Christina McClurg Riehl, Staff Attorney, Children's Advocacy Institute, University of San Diego School of Law, San Diego, CA
 - Alison A. Foster, JD, Executive Director, Family Connections Christian Adoptions, San Luis Obispo, CA
 - Jody Marksamer, National Center for Lesbian Rights, San Francisco, CA
 - Maria F. Ramiu, Staff Attorney, Youth Law Center, San Francisco, CA
 - Jacqueline Rutheiser, Senior Policy Advocate, California Alliance of Child and Family Services, Sacramento, CA
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- Luisa Lamarche, Verne Teyler, Regina Martin, Dennis Schieffer, Chuck Adkins, Joan Femino, Nena Panza, Patty McCarthey, Jerry Johnson, Barbara Knight, and William C. Meenk, submitted the following testimony: (Comment #1)

Section 89378(a)(1)(C)

1. Comment:

The aforementioned testifiers each testified that 72 hours maximum of respite care is not long enough and should be modified to a more reasonable time, for example 120 hours or five days which, they say, is far more reasonable.

Response:

The Department thanks the testifiers for their comment. CDSS is unable to adopt your recommendation to modify the 72 hour limit for respite care in the proposed regulations. This determination is based on the statutory requirement that respite care not exceed 72 hours as specified in section 16501(b) of the Welfare and Institutions

Code. Respite care is intended to provide a short-term break from the demands of foster parenting when the caregiver has a need for relief.

The proposed regulations also provide a caregiver with the option to seek an alternative caregiver. Section 89378(a)(1)(B) permits an alternative caregiver to provide care for more than 72 hours if the caregiver receives prior approval from the social worker or probation officer for a "child."

- Donna Newman, Administrator, Safe Harbor Family Services, Inc., submitted the following comment: (Comment #2)

Section 89378(a)(1)(B) and (C)

2. Comment:

89378 (C) defines "Respite Care" as limited to 72 hours or less. While it's understandable that there would be time limits on alternate care, 72 hours is not sufficient time to allow the caretaker to attend an out-of-state funeral, or take a family trip the foster child can't go on; for example, when the child must be available for visits with their biological family or it's too late to make accommodations to include a recently placed child.

The "Alternate Caregiver" rules in 89378 (B) would allow for the scenarios mentioned above since no time limit is specified. However, it requires the alternate care to be provided in the caregiver's home, which would preclude one Safe Harbor-certified home from using another of our certified homes. This is not only unnecessarily onerous, but misguided: the absentee caretaker who uses another foster parent certified through their same agency has at least the expectation the children will be overseen by an experienced foster parent trained to the same standards vis-a-vis the safeguarding of personal rights, prudent parent decision-making, reporting requirements, etc.

We have a certified foster family who travel to visit relatives in Mexico for several weeks every year. With the placing county's authorization, they take 2 of the 3 fos/adoption children in their care. As yet legal documents are lacking on the third child, which precludes her from accompanying her adoptive family on their cross-border trip. Air travel is not feasible, financially or otherwise, which means the foster family must travel by car. The trip, therefore, must be long enough to make it worth the expense and exertion.

Under the proposed revisions, this family would no longer be able to take this trip because of that third child. 89378 (B)(3) would give them the needed time but would prohibit their only realistic option, i.e., leaving their adoptive daughter in the care of another of our certified homes. 89378 (C) would allow the certified home option, but only for an unhelpful 72 hours.

I do the bulk of training for Safe Harbor's prospective foster parents, and have found the simple "babysitting" vs. "respite care" dichotomy a lot clearer than what is being proposed here. I would suggest combining (B) Alternate Caretaker and (C) Respite

Care under one heading, "Respite Care," minus the 72-hour limit. If this is not possible (due to the W&I Code "respite care" reference), then I would instead propose that 89378 (B)(3) be modified to read "...shall occur in the home of the caregiver or another foster home that is licensed/certified by the same licensing agency, as defined in 89201 (l)(1)." Optionally, references to capacity constraints could be included. However, if a time limit is specified, I would recommend "not more than 30 days," to accommodate the kind of scenario I described above.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to combine alternative caregiver with respite care under one heading in the proposed regulations without the 72 hour limit specified for respite care in the proposed regulations. This determination is based on respite care being intended to provide a short-term break from the demands of foster parenting when the caregiver has a need for relief and alternative caregiver being intended for routine breaks from providing care, such as personal business or vacations. Statute requires that respite care not exceed 72 hours as specified in section 16501(b) of the Welfare and Institutions Code. The option to seek an alternative caregiver does not have a statutorily mandated 72 hour limit, and care can exceed 72 hours if the caregiver receives prior approval from the social worker or probation officer for a "child" as specified in Section 89378(a)(1)(B).

CDSS also will not adopt your recommendation that the proposed alternative caregiver regulations be modified to allow care to also be provided in the home of another approved, certified, or licensed home. This determination is based on the fact that care outside of the caregiver's home could constitute a change in placement for a "child." The regulations would not preclude another approved, certified, or licensed caregiver from acting as an alternative caregiver as long as care is provided in the caregiver's home as would be permitted by the proposed regulation.

- Diana Boyer, Sr. Policy Analyst, County Welfare Directors Association, submitted the following comments: (Comments #3 - #6)

Sections 89228(a)(1) and 89234(b)(2)

3. Comment:

Foster Family Home Capacity: Page 61 the proposed regulations limit capacity to six children, and allow the licensing agency to grant a waiver or exception for the home. Page 66 requires the caregiver to submit a new application for licensure for "any change that affects the capacity of the home." We believe the intent of this latter provision was to ensure some process whereby the licensing agency would be notified of situations when there were additions to the home (i.e. new adult, etc.). We also believe any requirement for a new application to trigger a "waiver" of capacity requirements would be both onerous for the caregiver and would prevent child welfare agencies from timely placements of children into care. We request the regulations clearly specify that a new application is not required when additional children are

placed in the home by the child welfare agency (e.g. agency places to keep sibling groups together, and the caregiver can meet the needs of all children in his or her care). This clarification should be added to page 66 (89234(b)(2)).

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to clarify the circumstances that would require a new application to be filed based on a change in capacity. This determination is based on the fact that it is not always necessary for a caregiver to submit a new application. A caregiver is only required to submit a new application if the licensed capacity of the home is exceeded and is not required to submit a new application each time a "child" is placed in the home.

Section 89378(a)(1)(C)

4. Comment:

Respite Care: We request language be added to require the caregiver to inform the social worker of the location of the child when the caregiver is utilizing respite care, including contact information for the respite caregiver. In some cases, the caregiver will make arrangements for respite care through the child welfare agency, but this may not always be the case. Please note we are not requesting prior approval, only notification, so that the social worker has information concerning the location of the foster child when respite care is utilized.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that language be added to the proposed respite care regulations that would require the caregiver to inform the social worker of the location of a "child" and contact information for the respite caregiver. This determination is based on the recommendation going beyond the scope of licensing standards and requirements in Title 22 regulations. The recommendation may be more appropriate to regulations promulgated in Division 31 Manual of Policies and Procedures, which govern social workers.

Section 89361(a)

5. Comment:

Add

- Arrest or conviction of any adult or juvenile residing in the home
- Any body of water added to the residence

These additions require reporting to the licensing agency; would not limit "prudent parent" standards, and licensing agencies should be informed when these issues become present. Note that arrests/convictions should show up on a subsequent DOJ

report to the agency, known as a "rap-back" report, assuming all individuals in the home are known to licensing as living in the home and are Live Scanned as required under current law and regulations.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "Arrest or conviction of any adult or juvenile residing in the home" be added to the proposed regulation. This determination is based on this requirement already being covered by the requirement to report an "unusual incident" as specified in Section 89361(a)(4).

Further, CDSS will not adopt your recommendation that "Any body of water added to the residence" be added to the proposed regulation. This determination is based on this requirement already being covered by the requirement to submit a new application whenever there is a "change in conditions or limitations" described on the current license as specified in Section 89234(a).

Section 89374(c)

6. Comment:

Add

- Visitation with siblings and biological parents

Per WIC 11460(b) the basic rate is intended to cover "reasonable travel to the child's home for visitation." This seems to have been missed by the draft regulations.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "Visitation with siblings and biological parents" be added to the proposed regulation. This determination is based on the proposed regulation that would permit other arrangements as specified in the written plan identifying the specific needs and services of the 'child' or included in the written placement agreement. Language from section 11460 of the Welfare and Institutions Code, which includes "reasonable travel to the child's home for visitation" is included in proposed handbook for Section 89201(c)(3).

- Christina McClurg Riehl, Staff Attorney, Children's Advocacy Institute (CAI), University of San Diego School of Law, submitted the following comments: (Comments #7 - #12)

General Comment

7. Comment:

Throughout the proposed regulatory package, the term "facility" is used to refer to the physical structure (ie home) of the licensed foster family. The use of this term seems inappropriate in the promotion of "normalcy" and, instead, lends an institution feel to regulations which are intended to govern homes. CAI proposed that the term "facility" be stricken from the proposed regulatory package and, instead, the term "foster family home" be used in its place.

Response:

The Department thanks the testifier for this comment. CDSS will adopt, in part, your recommendation to replace "facility" with "foster family home" based on CDSS movement away from use of the term "facility" to use of the more normalizing term "home." The replacement of "facility" or "facilities" with "home" or "homes" will be reflected in Sections 89206(c); 89219(b)(3) and (e)(1)(C); 89240(a)(1); 89255 section title and 89255(a), (b), (c)(1), and (c)(2); 89256 section title and 89256(a); and 89387(d)(1)(D)1. CDSS will not replace "facility" with "home" in regulations which apply to either a home or facility and are not specific to foster family homes only. CDSS does not have the authority to adopt your recommendation in instances where the term "facility" is used in statute referenced in handbook.

Section 89201(b)(1)

8. Comment:

This regulation is a definitional regulation which should be closely scrutinized as the regulation can have far-reaching implications. CAI's first requested amendment to this proposed regulation is an amendment to subdivision (b)(1) which defines "Basic Rate" and includes, as part of the handbook, the language from Welfare and Institutions Code § 11461 tying the Basic Rate to the California Necessities Index. While this is an accurate repetition of the law as currently written in statute, CAI anticipates changes to this statute. CAI has participated in co-litigating the case of *California State Foster Parent Association, et. al., v. Wagner*. The United States District Court for the Northern District of California has found that California is currently in violation of federal law because California does not consider the cost factors mandated by the Child Welfare Act in its computation of the Basic Rate paid to foster parents. Based on this finding there is a great likelihood that Welfare and Institutions Code § 11461 will need to be amended. CAI, therefore, recommends eliminating this portion of the regulatory change until the statute is amended.

Response:

The Department thanks the testifier for this comment. CDSS appreciates being advised of necessary changes to statute that provides the basis for regulations.

CDSS does not have the authority to adopt your recommendation based on the pendency of the change to statute in section 11461 of the Welfare and Institutions Code and the requirement that regulations reflect current law.

Section 89201(c)(3)

9. Comment:

CAI's next requested amendment to this proposed regulation is an amendment to subdivision (c)(3) which defines "Care and Supervision". To appropriately further the guiding principles developed by the CRRRW, namely to create a more family-like environment, "care and supervision" should be specifically tailored to each child and should not be distilled to a specific list in a book of regulations. If it is deemed necessary to include a list of what "care and supervision" entails in a definitional regulation, language should be added so that it is clear "care and supervision" includes but is not limited to the specifics of the list. As currently written, the proposed regulation gives the appearance of being all-inclusive. In actuality, however, some aspects of care and supervision are, necessarily, excluded from the regulation. For example, the list provided in the proposed regulation does not even include transportation to the child's home for visitation as required in Welfare and Institutions Code § 11460.

Response:

The Department thanks the testifier for this comment. CDSS will adopt your recommendation to add "includes, but is not limited to" based on the fact that care and supervision may include additional activities. The addition of this language will be reflected in the definition of "care and supervision" in Section 89201(c)(3).

Section 89201(i)(2)

10. Comment:

CAI's final requested amendment to this proposed regulation is an amendment to subdivision (i)(2) which defines "Independent Living Program" as "a program authorized under 42 USC section 677 for services and activities to assist children 16 or older in foster care to make the transition from foster care to independent living." The handbook lists examples of possible ILP assistance services. CAI proposes that the list should also included assistance finding a mentor or trustee for the transitioning youth. Once they are in the foster care system, foster youth experience instability, not only in their home and school placements, but also in the myriad of changing faces in their lives. Their classmates change along with placement and school changes and the important adults in their lives change frequently as well; their social workers change, their attorneys change, and their foster parents change. It is important both for the wellness of transition age foster youth and their transition into a successful, productive adult life, for them to have access to a consistent, caring adult in their lives. The mentor or trustee would help the foster youth to navigate the intricacies of college application, financial aid application, finding and renting an apartment, and other issues with which a parent would traditionally provide support and assistance. Additionally, the mentor or trustee could serve in the role of a trustee where necessary such as, for example in the supervision (under court direction) of a post-emancipation plan for self-sufficiency pursuant to Probate Code § 1517 (b)

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to add assistance with finding a mentor or trustee to examples for the "Independent Living Program" definition in the proposed regulations. This determination is based on the likelihood that a Transitional Independent Living Plan for a "child" would include the "child" having a mentor or trustee if appropriate. There are also other worthy ILP services not included in the list, which is intended to be a guide to services rather than a comprehensive list of services.

Section 89318

11. Comment:

This regulation deals specifically with the qualifications of FFH Applicants. Subdivision (a) lists requirements of a foster family home license applicant. Of course, it is very difficult to create an exhaustive list. CAI submits this list should, at a minimum, include the following additional criteria:

- The applicant's willingness and ability to provide transportation for the child to visit biological family members, particularly parents and siblings.
- The applicant's willingness and ability to promote and provide transportation for at least one age-appropriate extra-curricular activity for each "child" in the applicant's care.

These proposed additions further the goal of Welfare and Institutions Code §§ 362.05 and 727 which require that every child adjudged a dependent child of the juvenile court be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. Additionally, these additions comport with requirements delineated in Proposed Regulations 89374 and 89379.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that applicant qualifications also specify that the applicant be willing and able to provide transportation to visitation and activities for a "child" in the proposed regulations. This determination is based on the recommendation being redundant with other proposed regulations. As specified in the proposed regulation in Section 89318(a), the applicant would be required to have the "...knowledge, ability, and willingness to comply with the applicable laws and regulations...." For example, the caregiver may be required to provide transportation as specified in the written plan identifying the specific needs and services of the "child" or the written placement agreement, as specified in Section 89374(c). This may include providing transportation to visitation for the "child." The caregiver would be required to ensure transportation to activities, provided the transportation to these activities is reasonable as specified in Section 89374(c)(3).

Section 89387

12. Comment:

This regulation deals specifically with the building and grounds of a licensed foster family home. CAI recommends an amendment to subdivision (a) (3) of this regulation. Subdivision (a) (3) deals with who can share a room and provides that, except for infants, children shall not share a bedroom with an adult. We recommend that children should also be permitted to share a bedroom with their adult sibling who is a former foster youth, to the extent permitted under Federal Law. As we have mentioned above, the life of a foster child can be filled with a myriad of changing faces. By adding CAI's proposed amendment, the Agency is able to show a commitment to youth aging out of foster care while, at the same time, showing a commitment to keeping family units closely connected.

Response:

The Department thanks the testifier for this comment. CDSS will adopt your recommendation that language be added to the proposed regulation to clarify that a "child" would also be permitted to share a bedroom with their adult sibling who is a former foster youth. This determination is based on the presence of compatible proposed regulation that addresses a "child" turning 18 with regard to bedroom arrangements. For purposes of clarity, language will be added to compatible regulation in Section 89387(a)(3)(B) to specify "...and may continue to share a bedroom with another 'child.'"

- Alison A. Foster, JD, Executive Director, Family Connections Christian Adoptions, submitted the following comments: (Proposed changes are underlined) (Comments #13 - #15)

Section 89207

13. Comment:

Section 89207 – Exemption from licensure

This proposal would conform the regulations to the existing practices established by the Department's previously-issued ACL dated March 10, 1994, regarding AB 3456 and designated relinquishments.

...

(c)(3) A home which that meets all of the following criteria:

(A) Approved by a licensed adoption agency, or the Department, for the adoptive placement of a child; and

(B) The child is legally free for adoption; and or the child is in the physical care of the person(s) designated as adoptive parent(s) in a signed relinquishment to the Department or a licensed adoption agency, for a period not to exceed six months pending placement for adoption; and

(C)The agency or the Department is providing supervision of the placement home pending finalization of the adoption.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to add language to the proposed regulation that would permit a child in the physical care of designated adoptive parents specified in a signed relinquishment to be in a home that is exempt from licensure. This determination is based on the requirement in the Department's Community Care Licensing Division letter to all public and private adoption agencies with the subject line Assembly Bill 3456 - Designated Relinquishments, that you cited, dated March 10, 1994, that such a child be cared for by the adoptive parents in a foster care placement until the child is free for adoption. This determination is also based on the Department's All County Information Notice (ACIN) I-61-99 with the subject line Assembly Bill 1544 Regulations Training: Follow-Up Questions and Answers, dated August 25, 1999, that requires that if "...the child is relinquished by one birth parent to a licensed public or private adoption agency...the prospective adoptive parents' home must meet the requirements for a foster care placement until the child is free for adoptive placement..." as specified in the Adoptions Program Regulations, Section 35128(c) and (e). The proposed regulations exempt foster care placements in certified family homes from licensure, as specified in Section 89207(c)(2)(A).

Section 89387

14. Comment:

Section 89387 – Buildings and Grounds

Subdivision (a)(1) of the proposal would provide needed capacity and flexibility for families who accept placement of sibling groups, including those with existing three-to-a-room arrangements for biological and adopted children. This narrowly-drawn exception will allow only one bedroom to house three siblings, absent a DAP. This will reduce CCL staff burdens for the most commonly requested and approved three-to-a-room exception. Subdivision (a)(3)(b) would allow the biological or adopted children to continue sharing a room with any other child in the home (biological, adopted, foster child) upon turning 18. It is a tragedy when a foster child has to be moved out of home, simply because his or her existing foster sibling and roommate has a birthday.

(a) The caregiver shall provide bedrooms in the home which shall meet, at a minimum, the following requirements unless a Documented Alternative Plan (LIC 973) is approved.

(1) No more than two children shall share a bedroom-, except that three siblings may share a room. Only one of the bedrooms in the home may house three children, unless a Documented Alternative Plan is approved.

...

(3) A ~~"child" who turns 18 and meets the requirements specified in Section 89201, subsection (c)~~ child (including foster, adopted, or biological) who turns 18 while sharing a room with another child (including foster, adopted, or biological) for at least 90 days prior to his or her 18th birthday, is not considered an adult for purposes of this section.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation clarifying in the proposed regulations that three siblings may share a bedroom. This determination is based on the fact that the proposed regulations do not preclude a caregiver from requesting a Documented Alternative Plan from the licensing agency that would permit three siblings to share a bedroom. The licensing agency must review a DAP to ensure appropriate use of bedrooms in the home.

CDSS will adopt, with modification, your recommendation that language be added to the proposed regulation to clarify that any child who turns 18 in the home may continue to share a room with another child in the home. For purposes of clarity, language will be added to specify "...and may continue to share a bedroom with another 'child'" in Section 89387(a)(3)(B).

Section 89420

15. Comment:

Section 89420 – Fire Clearance

This proposal would clarify the presumed intent that a fire clearance isn't necessary for families approved for or having placement of infants.

(a) ~~Prior to~~ Before accepting a ~~disabled~~ "child" who is non-ambulatory, or deciding to continue to provide services to a "child" determined after placement to ~~have a disability~~ be non-ambulatory, the caregiver shall notify the licensing agency so that a fire clearance, approved by the local fire authority having jurisdiction, can be obtained. This requirement shall not apply to placement of infants.

Response:

The Department thanks the testifier for this comment. CDSS will adopt, with modification, your recommendation to exempt infants from the proposed fire clearance regulation. This determination is based on the fire clearance exemption for foster family homes with a capacity of six or fewer and caring for children who are ambulatory or who are two years of age or younger, as specified in section 13143 of the Health and Safety Code. Your recommended language will be reflected in the addition of proposed regulation in Section 89420(a)(1). The pertinent part of section 13143 of the Health and Safety Code will also be reflected in handbook for Section 89420.

- Jody Marksamer, National Center for Lesbian Rights (NCLR), submitted the following comments, (Comments #16 - #25)

General Comment

16. Comment:

Sections 89372, 89377, 89387, 89379, and 89318. NCLR supports these proposed changes to ensure that the personal rights of foster youth include the rights that were added by AB 458.

Response:

The Department thanks the testifier for their support and ask the testifier to refer to the responses to their concerns, Comments #17 - #25 below.

Proposed Regulations to Clarify the Scope of Foster Children's Personal Rights

Section 89372

17a. Comment:

§89372 Personal Rights

(a)(2) To be provided with and allowed to possess and use their own personal items that are consistent with his or her stated gender identity including:

- (A) Clothes, provided the clothes are age-appropriate as defined in Section 89201, subsection (a)(2) and do not violate school standards when worn during school activities. The "child" should not be forced to wear clothing according to their birth sex.
- (B) Toiletries and personal hygiene products, including enclosed razors used for shaving, as age and developmentally appropriate.
- (C) Belongings, including items that were a gift to the "child."
- (D) The "child" should be allowed to continue or begin wearing clothing that is comfortable to the "child" and consistent with the child's gender expression (e.g. boxer shorts).

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendations with regard to the proposed regulations. Your concerns are addressed by the implementation of AB 458 in section 16001.9 of the Welfare and Institutions Code and section 1529.2 of the Health and Safety Code. The recommended language is not necessary as it is already reflected in Section 16001.9 of the Welfare and Institutions Code, which specifies that a "child" must have "...fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status" as referenced in handbook for Section 89372(a). The recommended language is also already reflected in Section 1529.2 of the Health and Safety Code, which specifies that a caregiver must receive pre- and post-placement training in the "...right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion,

sex, sexual orientation, gender identity, mental or physical disability, or HIV status" as referenced in handbook for Section 89405(a)(1).

17b. Comment:

(a)(10) To have private or personal information including, but not limited to, any medical condition or treatment, psychiatric diagnosis or treatment, history of abuse, school reports reflecting poor performance or behavior, information relating to the biological family of the child, and information related to the sexual orientation and gender identity of the "child," maintained in confidence.

This section should be amended to clarify exactly what information the caregiver is *allowed* to disclose and in what situations. This regulation needs to be defined narrowly as to avoid any abuse or misuse.

In addition, it is important that regulations specify that sexual orientation and gender identity are to be kept confidential unless disclosure is necessary.

(a)(11) To be accorded dignity and respect of being referred to by the name and pronoun preferred by the "child" that corresponds with the "child's" gender identity.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "...and information related to the sexual orientation and gender identity of the 'child' maintained in confidence" be added to the proposed regulation. This determination is as described in our response to Comment #17a. This determination is also based on the use of "including, but not limited to" in Section 89372(a)(10), which provides for the confidentiality of other information not specifically cited when appropriate, including information about the sexual orientation and gender identity of a "child." This determination is additionally based on the implementation of section 16001.9 of the Welfare and Institutions Code, which specifies that a "child" must have the right to "...confidentiality of all juvenile court records consistent with existing law", as referenced in handbook for Section 89372(a).

CDSS also will not adopt your recommendation that an additional subsection, (a)(11), be created in the proposed regulations and "To be accorded dignity and respect of being referred to by the name and pronoun preferred by the 'child' that corresponds with the 'child's' gender identity" be added to the proposed regulations. This determination is as described in our response to Comment #17a. This determination is also based on proposed regulation in Section 89372(a)(9), which would require that a "child" "...be accorded dignity in their personal relationships with other persons in the home," which would include a "child" being treated as recommended in accordance with their gender identity. This determination is additionally based on the implementation of section 16001.9 of the Welfare and Institutions Code, which specifies that a "child" has the right to "...live in a safe, healthy, and comfortable home where he or she is treated with respect" as referenced in handbook for Section 89372(a).

17c. Comment:

We further suggest that the following topics raised in the Personal Rights Handbook discussion of Welfare and Institutions Code section 16001.9 be further discussed and clarified within section 89372.

(10) To attend religious services and activities of his or her choice.

Caregivers should not subject youth to lectures, sermons, or other materials that condemn or pathologize homosexuality or gender nonconformity. The "child" should be allowed to express the his or her own religious beliefs in a manner that is comfortable for the "child."

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the "his or her age and developmental level.

Caregivers should make an effort to provide parity in recreational activities for all youth such that gay, lesbian, bisexual and transgender children are allowed to participate in activities that are consistent with their interests and geared toward the community with which they identify.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

It is important to clarify here that lesbian, gay, bisexual and transgender (LGBT) youth be allowed to develop contacts in the context of normative adolescent social and institutional supports. Foster youth have the right to make and maintain social contacts with people outside of the foster care system. Youth who are protected by AB 458 may be especially vulnerable to discrimination by licensees who obstruct these rights by failing to allow them to maintain their social lives as they choose.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that items in section 16001.9 of the Welfare and Institutions Code in handbook be further clarified in the proposed regulations. This determination is as described in our response to Comment #17a. This determination is also based on the implementation of section 16001.9 of the Welfare and Institutions Code, which specifies that a "child" has the right to "...attend religious services and activities of his or her choice" and to "...attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level" as referenced in handbook for Section 89372(a).

Proposed Regulations to Clarify the Scope of Caregiver Responsibilities

Section 89377

18. Comment:

§89377 Reasonably Prudent Parent

At the beginning of the Handbook, there should be a clarifying line that this standard should not conflict with the child's gender identity or sexual orientation:

The Reasonable and Prudent Parent Standard is intended to assist caregivers in balancing the life of a child in a way that is not inconsistent with the child's sexual orientation or gender identity.

(c)(3) The best interest of a 'child' based on information known by the caregiver that is not inconsistent with the development of the "child" in regards to his or her sexual orientation or gender identity or lead to discrimination.

Addition of a Handbook Here:

Research has shown best interest of children include recognition and support of their expression of their sexual orientation and gender identity.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "...balancing the life of a 'child' in a way that is not inconsistent with the 'child's' sexual orientation or sexual identify" be added to the proposed handbook. This determination is as described in our response to Comment #17a.

CDSS also will not adopt your recommendation to add "that is not inconsistent with the development of the 'child' in regards to his or her sexual orientation or gender identity or lead to discrimination" to the proposed regulation. This determination is as described in our response to Comment #17a. This determination is also based on proposed regulation which would require a caregiver to consider the best interest of a "child" as determined by information known by the caregiver, which may include information about the sexual orientation or gender identity of a "child."

CDSS also will not adopt your recommendation that handbook be added to proposed regulation to reference research on best interest. This determination is as described in our response to Comment #17a. This determination is also based on proposed handbook being sufficient to guide caregivers in considering information provided or known about a "child" when determining best interest in using the Reasonable and Prudent Parent Standard.

Section 89387

19. Comment:

§89387 Buildings and Grounds

(a)(2)(B) Addition of a Handbook Here:

The caregiver should not feel compelled to house transgender youth strictly according to their anatomical sex. The caregiver should accept the youth's gender identity as he or she describes it, and make individualized housing decisions based on the emotional and physical well-being of the "child," the "child's" preferred housing option, the "child's" evaluation of his or her safety, the availability of privacy, the range of housing options and any recommendations from the "child's" mental health providers regarding appropriate housing options.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that handbook language be added to this section of proposed regulations to provide the caregiver with guidance in regard to bedroom arrangements for transgender youth. This determination is as described in our response to Comment #17a. Your recommendation is also covered by regulation that would permit a caregiver to seek a Documented Alternative Plan (DAP) for bedrooms as specified in Section 89387(a) to provide flexibility for this decision making. This determination is additionally based on licensing agency review of a caregiver's rationale for seeking a DAP, to facilitate appropriate decision-making.

Section 89379

20. Comment:

§89379 Activities

Handbook suggestions:

(a)(11) Youth groups, activism groups, California Youth Connection, and LGBT proms.

(a)(9)(C) The caregiver should not prevent the "child" from accessing LGBT websites that are age and developmentally appropriate.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that language specific to the LGBT population be added to suggested activities in handbook included with proposed regulations. This determination is as described in our response to Comment #17a. This determination is also based on the implementation of section 16001.9 of the Welfare and Institutions Code, which specifies that a "child" has the right to "...attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level" as referenced in handbook for Section 89372(a). This determination is additionally based on the fact that the proposed list of activities is not exhaustive and is intended only to provide examples of activities a "child" may partake in.

Section 89318

21. Comment:

§89318 Applicant Qualifications

(a)(5) Promote a healthy, balanced and supported childhood experience and treat a "child" as part of the family, to the extent possible.

Response:

The Department thanks the testifier for this comment. CDSS will adopt, with modification, your recommendation that "healthy, balanced, and supported" be added to the proposed regulation. This determination is based on the Children's Residential Regulations Review Workgroup guiding principle to "Promote a 'normal childhood' experience." A modification of your recommendation, to read "Promote a normal, healthy, balanced, and supported childhood experience..." will be reflected in Section 89318(a)(5).

Proposed Regulations to Clarify Inconsistencies and Confusion

Section 89318

22. Comment:

Different word usage

§89318 Applicant Qualifications

(a) An applicant shall have the knowledge, ability, and willingness to comply with all applicable laws and regulations and:

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "the" be replaced by "all" in the proposed regulation. This determination is based on the fact that CDSS does not have the authority to require compliance with all laws and regulations, only the regulations that pertain to the operation of a foster family home.

Section 89323

23. Comment:

Renumbering

§89323 Emergency Procedures

(a) The caregiver shall post emergency telephone numbers, in a prominent location.

(1) The caregiver shall discuss and practice emergency procedures with a "child" as age and developmentally appropriate at time of new placements and every six months.

(+) **(2)** The caregiver shall ensure that occasional short-term babysitters, as defined in Section 89201, subsection (o)(1), and alternative caregivers as defined in Section 89201, subsection (a)(3), know the location of the emergency numbers.

Response:

The Department thanks the testifier for this comment. CDSS will adopt your recommendation that the second (a)(1) in the proposed regulation be renumbered to (a)(2) in the proposed regulations. This determination is based on the fact that the second (a)(1) is a typographical error, making it a duplicate. The recommended renumber will be reflected in Section 89323(a)(2).

Section 89372

24. Comment:

Grammar

§89372 Personal Rights

(a)(3) Provided the rights of others are not infringed upon, to have visitors that include

Response:

The Department thanks the testifier for this comment. CDSS will adopt your recommendation that the proposed regulation be revised to read "Provided the rights of others are not infringed upon, to have visitors that include:". This determination is based on the formatting standard for regulations, which requires that the caveat, condition, or exception, be placed first in regulatory text. The revision will be reflected in Section 89372(a)(3).

General Comment

25. Comment:

Theme/ Language

It is important to adopt a nondiscrimination policy that explicitly includes sexual orientation and gender identity and makes clear that anti-LGBT harassment and discrimination is unacceptable behavior that will not be tolerated.

Response:

The Department thanks the testifier for this comment. CDSS refers to the definitions for gender identity in Section 89201(g)(1) and sexual orientation in Section 89201(s)(3), Section 89317, Nondiscrimination of Applicants, Section 89372, Personal Rights, and Section 89405, Training Requirements, as examples of regulations consistent with nondiscrimination policy.

- Maria F. Ramiu, Staff Attorney, Youth Law Center, submitted the following comments, (Comments #26 - #30)

General Comment

26. Comment:

Authorized Representative. The use of the term throughout the regulations is confusing because the definition provides that it is anyone who legally can act on behalf of the child and provides specifics about who that may include. Various people have the legal right to act on behalf of the child with respect to some, but not necessarily all, issues with respect to a child. Therefore a child usually has several different people who are authorized representatives for different purposes. The regulations provide that the caregiver is required or allowed to do certain acts with anyone who falls within the definition of authorized representatives. However in some cases it may not be appropriate for a particular authorized representative to do certain things. Also in some regulations, it does not provide clear guidance to the caregiver as to whom they should deal. The regulations should be tightened by substituting the specific category of person who is authorized for the act. The term authorized representative should only be used in those few instances where a statute requires the term or all of the "authorized representatives" as defined are indeed authorized to act in the specific regulation.

89226 (d) (page 56)

All "authorized representatives" as defined should not have the authority to receive the child's cash and personal property when the child leaves a placement. If the placing agency remains responsible for the custody and control of the child, the placing agency should be responsible for seeing that the child and his/her cash and personal property that is not handed over to the child is delivered to the next caregiver.

Proposed Changes:

The regulation should provide:

When a "child" leaves the home, the caregiver shall surrender cash resources, personal property, and valuables that belong to the "child" to the "child" if age and developmentally appropriate, or to the placing agency or other authorized representative who is responsible for the care and custody of the "child", with an itemized inventory list of these items.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to generally clarify "authorized representative" in the proposed regulations. This determination is based on the intent to leave the proposed regulations vague to accommodate the variability in people who may have legal responsibility for the "child." The specific category of responsible person may not be the same for every "child" in some situations, depending on the circumstances of a "child." Thus, it is not always possible to anticipate the specific category of person who will be responsible in a given situation. Where appropriate and unless otherwise specified, the proposed regulations use "authorized representative" or "person or agency responsible for placing the child."

CDSS will adopt your recommendation to place reference to a "child" before placing agency and authorized representative in the proposed regulation. This determination is based on a "child" having ownership of the cash resources, personal property, and valuables. This determination is also based on situations in which a youth is emancipating from care and must assume ownership of these items as an adult. This language will be reflected in Section 89226(d).

CDSS also will adopt your recommendation to add "or to the placing agency" and "who is responsible for the care and custody of the 'child'" to the proposed regulation. This determination is based on the proposed regulation dealing with the exchange of cash resources, personal property, and valuables of a "child," which typically occurs when a "child" is physically in the care and custody of an adult and enters or exits placement. It is appropriate for a placement agency to assume this responsibility on behalf of a "child" in this instance. If the placement agency is not responsible, the recommended language clarifies that the authorized representative must be responsible for the care and custody of the "child." The addition of this language will be reflected in Section 89226(d).

Section 89244(c)(1)

27. Comment:

89244(c)(1) (Page 78)

The proposed provision is worded awkwardly and is a little confusing:

(1) The caregiver shall ~~make provisions~~ arrange for the ~~examination~~ review of all records relating to the operation of the foster family home.

Does this mean the caregiver is responsible for getting a 3rd party to review his records? Or does it mean the caregiver is obligated to make his records available for review by the licensing agency?

Proposed change:

The caregiver shall make available for inspection, audit and/or copying all records relating to the operation of the foster family home.

Response:

The Department thanks the testifier for this comment. CDSS will adopt, with modification, your recommendation that "make available for inspection, audit, and/or copying" be added to the proposed regulation. This determination is based on the fact that upon request by the licensing agency, the caregiver must make records that pertain to the home available for inspection. For purposes of clarity, CDSS will implement a modification of your recommendation, to read "The caregiver shall make all records relating to the operation of the foster family home available for review" in Section 89244(c)(1).

Section 89372(a)(3)

28. Comment:

Personal Rights- Visitors

89372 (a) (3) page 107

The regulation provides that a child in care has the right:

To have visitors, provided the rights of others are not infringed upon., that include:

(A) Relatives, ~~during waking hours~~, unless prohibited by court order, ~~or by the child's authorized representative.~~

(B) The authorized representative. for the "child."

(C) Other visitors, unless prohibited by court order or by the child's authorized representative. ~~for the "child."~~

Relatives should be changed to "family members" to include NREFMs(non-related extended family members) and reflect the statutory right to contact family members. (See e.g. WIC 16001.9(a)(6) Instead of using "authorized representative" spell out who is always authorized to visit. The last subsection, (C) should be deleted. The child's CASA, attorney, parents or legal guardians do not have the right to bar someone from visiting.

Proposed change:

To have visitors, provided the rights of others are not infringed upon, that include:

(A) Family members, unless prohibited by court order and

(B) The attorney, CASA, foster youth advocate or supporter, social worker or probation officer for the "child."

(C) Other visitors, unless prohibited by court order or by the child's placing agency

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "relatives" be replaced by "family members" in Section 89372(a)(3)(A). This determination is based on statutory language in section 16001.9(a)(6) of the Welfare and Institutions Code, which specifies that a "child" has the right to "contact" family members and statutory language in section 16001.9(a)(7), which specifies that a "child" has the right to "visit and contact" brothers and sisters, who are relatives. The proposed regulations would permit a "child" to have "other visitors," which includes nonrelative extended family members, in Section 89372(a)(3)(C).

CDSS will not adopt your recommendation that "authorized representative" be replaced by "placing agency" in Section 89372(a)(3)(C). This determination is based on the definition for "authorized representative" also encompassing placing agency.

Section 89372(a)(5)

29. Comment:

Personal Rights - Telephone Calls

89372(a)(5) page 107

Foster youth have the right to make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by a court order. (WIC 16001.9(a)(9). The caregiver can have reasonable house rules (restrictions) on the use of the phone and correspondence (time, place and manner), but social workers and probation officers cannot impede on that right without a court order. A social worker or probation officer does not live in the foster home and is not in a position to regulate time, place and manner of communications. Any other type of restriction imposed impedes upon the statutory rights of the child.

The provision also provides that the caregiver can request reimbursement from the child or his "authorized representative" for long distance calls. Again, some authorized representatives are inappropriate in this context. The placing agency is responsible for maintaining the child and the caregiver should contact the placing agency about reimbursement.

Proposed Changes:

- (A) *Reasonable restrictions may be imposed by the caregiver on calls and correspondence.*
- (B) *The caregiver may:*
 - a. *Request reimbursement for the cost of long distance calls made by the "child" from the child or his/ or her placing agency.*

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "social worker" and "probation officer be deleted from the proposed regulation in Section 89372(a)(5)(A). This determination is based on the fact that the social worker and probation officer have first hand knowledge of a "child" and can provide a "check and balance" for the caregiver.

CDSS will not adopt your recommendation that "authorized representative" be replaced by "placing agency" as a responsible party in the proposed regulation in Section 89372(a)(5)(B)1. This determination is based on the definition for "authorized representative" also encompassing placing agency.

Section 89378(a)(1)(D) and (b)

30. Comment:

Care & Supervision

89378(D) & 89378(E) pages 123/124

Leaving child without adult supervision and leaving child in a parked car

The regulations should be revised to allow caregivers in appropriate situations to regularly allow some youth to be home alone. As proposed, the regulations would prohibit a teenage child from being home alone for 2 hours after school everyday, but would allow that child to sit in a car for 2 hours after school everyday. The "home alone" regulation should be revised to provide that leaving a child alone without adult supervision is not prohibited provided that it is consistent with prudent parent standard, it is for a limited period of time not to exceed 24hrs at a time, and the child knows the emergency numbers, emergency procedures and how to contact caregiver. The parked car regulation should be deleted. The prudent parent standard would apply in situations where it may be necessary and safe to leave a child in a car, but the inclusion of this regulation suggests that as long as it doesn't violate Vehicle Code section 15620 (leaving a child under 6 in a parked care) it is an acceptable practice.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that the proposed regulation in Section 89378(a)(1)(D) be revised so that it would permit a "child" to be left at home alone for a limited period of time on a regular basis when appropriate. This determination is based on a caregiver who may find it necessary to make such arrangements being able to seek a waiver or exception as specified in Section 89224, Exceptions and Waivers. It is also necessary to safeguard against the potential for neglect if a "child" is left alone for an extended number of hours on a repeated and regular basis.

CDSS also will not adopt your recommendation that proposed regulation in regard to leaving a child in a parked car be repealed. This determination is based on the fact that the caregiver would be required to comply with both reasonable and prudent parent standard and the Vehicle Code when determining if it is appropriate to leave a "child" in a parked car as reflected by the proposed regulation in Section 89378(b).

- Jacqueline Rutheiser, Senior Policy Advocate, California Alliance of Child and Family Services, submitted the following comments: These comments are also supported by Family Connections Christian Adoptions (Comments #31 - #46)

Section 89201(n)(2)(B) Handbook

31. Comment:

Infants should be exempted from the definition of "nonambulatory." The current definition inadvertently includes them and there are numerous regulatory requirements for "nonambulatory" that do not apply to infants. Infants should not require a special fire clearance approved by the local fire authority required for "nonambulatory" children (89420(a), page 148) nor should they be excluded from being placed in a room approved to accommodate children who are ambulatory (89410 (d), page 147).

Recommendation:

"'Nonambulatory persons' means persons, *exempting infants*, unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs...."

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to exempt infants from the "nonambulatory person" definition in the proposed regulations. This determination is based on the "nonambulatory person" definition being applicable to persons who have a disability that makes them nonambulatory for purposes of fire clearance. CDSS also does not have the authority to amend statutory language cited in handbook.

CDSS will adopt your recommendation to clarify that infants would not require a special fire clearance by the local fire authority required for "nonambulatory" children in Section 89420(a). This determination is as described in our response to Comment #15.

CDSS will not adopt your recommendation to clarify that infants would not be excluded from being placed in a room approved to accommodate children who are ambulatory in Section 89410(d). The proposed regulations would not prohibit a caregiver from having an infant in a bedroom for a "child" who is ambulatory.

Section 89201(s)(3)

32. Comment:

The definition should be broadened to include "actual or perceived" identification and "transgender."

Recommendation:

"Sexual Orientation" means the *actual or perceived* identification of any person as heterosexual, gay, lesbian, ~~or~~ bisexual, *or transgender*.

Response:

The Department thanks the testifier for this comment. CDSS will adopt your recommendation that "actual or perceived" be added to the "sexual orientation" definition in the proposed regulations. This regulatory language is necessary for consistency with current regulation in Section 89317, Nondiscrimination of Applicants, and current statutory language in section 16001.9 of the Welfare and Institutions Code, which specifies personal rights of children in foster care and section 1529.2 of the Health and Safety Code, which requires caregivers to receive nondiscrimination training. The addition of this language will be reflected in the definition in Section 89201(s)(3).

CDSS will not adopt your recommendation that "transgender" be added to the "sexual orientation" definition in the proposed regulations. This determination is based on the reference to "internal identification or self-image as male or female" in the definition for "gender identity" in Section 89201(g)(1).

Section 89201(s)(4) Handbook (b)(3)

33. Comment:

The word "impracticable" is a typo and should be changed to: "practical."

Recommendation:

The plan shall be written for the express purpose of aiding the teen parent and the caregiver to reach agreements aimed at reducing conflict and misunderstandings. The plan shall outline, with as much specificity as ~~impracticable~~, *practical*, the duties, rights, and responsibilities

Response:

The Department thanks the testifier for this comment. CDSS will adopt, with modification, your recommendation that "impracticable" be replaced by "practical" in the "shared responsibility plan" definition handbook in the proposed regulations. This determination is based on verification that "practicable," rather than "practical," is used

in the statute cited in handbook. The replacement of "impracticable" with "practicable" will be reflected in the "shared responsibility plan" definition handbook in Section 89201(s)(4).

Section 89219(b)(6)

34. Comment:

There appears to be a conflict between allowing a person to come into the home for a visit for up to one month and the caregiver using the "Reasonable and Prudent Parent Standard" in determining and selecting appropriate babysitters for occasional short-term use (see 89378 (a) (1) (A) (2), page 119). If the caregiver wanted to have a friend or family member babysit the "child" and that person also happened to be visiting in the home, the caregiver would be precluded from applying their "prudent parent" decisionmaking ability.

Recommendation:

The following persons are exempt from the requirement to submit fingerprints:
Adult friends and family of the caregiver who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with a "child,"
unless the caregiver applies the "Reasonable and Prudent Parent Standard" in determining that the visitor is an appropriate babysitter.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to clarify in the proposed regulations that short-term visitors may also act as occasional short-term babysitters who may be left alone with a "child." The proposed regulations would not prohibit a caregiver from making these arrangements since visitors would qualify as an occasional short-term babysitter as specified in Section 89219(b)(8).

Sections 89228(a)(2), (a)(3), and Handbook (C)

35. Comment:

If the conditions are met for the foster family home to provide care and supervision for more than six children, the waiver and exception should be granted on a case by case basis and the authorization for the home to be licensed for more than six children should not be considered a de facto license to place more than six children in the home for future placements. The language should be clarified to specify that the licensing agency must grant a new waiver or exception for individually approved cases each time more than six children are placed in the home.

Recommendation:

(a)(2) If it is determined that the home can meet the needs of all children in the home, the licensing agency may grant a waiver or exception **on a case by case basis** for the home to provide care to more than six children.

(a)(3) Provided that all the conditions of Health and Safety Code section 1505.2 and the conditions for homes with a capacity of more than six children specified in Section 89420, subsection (b) are met, the licensing agency may authorize a home **on a case by case basis** to care for up to eight children to accommodate a sibling group. A sibling group includes, but is not limited to, biological, step-siblings, and half-siblings.

Handbook (C) "The licensing agency may authorize a foster family home **on a case by case basis** to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met."

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that waivers or exceptions for increased capacity be granted on a "case by case" basis in the proposed regulations. This determination is based on the permissive nature of the proposed regulation, which uses "may" to indicate that the licensing agency has discretion on how to grant a waiver or exception for capacity, including the limitations on such a waiver or exception. In addition, specifying that a waiver for capacity may be granted on a "case by case basis" is likely to increase Community Care Licensing Division workload during a time of budget shortfalls. CDSS does not have the authority to amend statutory language cited in handbook.

Section 89228(c)

36. Comment:

If the licensing agency makes the determination that the caregiver cannot take care of the children in the home, the discretion should not be whether that number of children should stay in the home. The licensing agency must take action and issue a license for fewer children when the caregiver has already demonstrated that they cannot meet the required standards.

Recommendation:

The licensing agency ~~may~~ **shall** issue a license for fewer children than is requested when the licensing agency determines that the caregiver's responsibilities to other persons in the home, including persons under guardianship and conservatorship, would not allow the caregiver to provide the care and supervision required by these regulations.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to replace "may" with "shall" in the proposed regulation. This determination is based on consistency with licensing agency discretion to be flexible when making a determination in regard to the requested licensed capacity of a home. The use of "may" indicates to a caregiver that the licensing agency may or may not limit the licensed capacity of a home depending on an evaluation of a caregiver's circumstances.

Section 89234(b)(2)

37. Comment:

What are the circumstances that would require a new application to be filed based on a change in capacity? Would a foster family home have to apply for a new license each time a child moved in and out of the home? Or would they just apply for a modification to their existing license? If they have received a waiver to accommodate sibling groups, do they also have to apply for a new license?

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to clarify the circumstances that would require a new application to be filed based on a change in capacity. This determination is as described in our response to Comment #3.

Section 89361(a)(1)

38. Comment:

The death of anyone living in the home should be reported because it would affect the social and mental well being of the family and the foster child.

Recommendation:

The caregiver shall report to the licensing or approval agency and the person or agency responsible for placing a "child" when any of the following events occur. This report shall be made by telephone, e-mail, or fax within 24 hours after the event occurs or within the agency's next business day.

(1). Death of any ~~child~~ *one living in the home.*

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that the proposed regulation be modified to read "death of anyone living in the home." This determination is based on redundancy with other current and proposed regulation. As specified in Section 89361(a)(4), a caregiver is required to

report "Any unusual incident...which threatens the physical or emotional health or safety of any child in the home," which may include the death of anyone living in the home.

Section 89372(a)(1)

39. Comment:

The "child" should also be free from witnessing or hearing any other child, including biological children, receive corporal or unusual punishment or infliction from pain, from an adult in the house.

Recommendation:

The caregiver shall ensure that each "child" is accorded the personal rights in Welfare and Institutions Code section 16001.9. In addition, the caregiver shall ensure that each "child" is accorded the following personal rights:

To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature including but not limited to interference with the daily living functions of eating, sleeping, or toileting, or withholding of shelter, clothing, or aids to physical functioning. ***The "child" shall also be free from witnessing or hearing any other child, including biological children, receive corporal or unusual punishment or infliction of pain, from an adult in the house.***

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that language be added to the proposed regulations requiring that a "child" be free from witnessing or hearing another child in the home receiving corporal punishment from any adult in the home. The recommended language is unnecessary based on the fact that your concern is already addressed by current regulation in Section 89372(a)(1). As specified in this regulation, a "child" has the right to be free from potential harm from infliction of pain, humiliation, intimidation, or threat. This regulation is intended to require a "child" to be free from harm they might experience as a witness to corporal punishment of another child in the home.

Section 89372(a)(5)(B)5.

40. Comment:

Best Practice would be for the caregiver to have the right to check the history of the websites that the "child" has browsed in order to avoid inappropriate access to sites. Even with parental controls embedded in the software, many age inappropriate sites are still accessible. In addition, embedded software parental controls may not always be an appropriate option.

Recommendation:

The caregiver shall ensure that each "child" is accorded the following personal rights:

(5) To make and receive confidential telephone calls, and send and receive unopened mail and electronic communication, unless prohibited by court order.

(A) Reasonable restrictions may be imposed by the caregiver, social worker, or probation officer on calls and correspondence.

(B) Other reasonable restrictions may be imposed. The caregiver may:

5. Restrict Internet usage when appropriate, ***including having access to review the history of viewed websites.***

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that, when restricting Internet usage when appropriate, the caregiver have access to review the history of viewed websites. This determination is based on the proposed regulation being inclusive of a caregiver taking appropriate steps in general to restrict Internet usage. The recommendation is narrow, which makes it too prescriptive, and potentially exclusive of other appropriate steps that the caregiver may need to take to restrict Internet use. The recommendation may also infringe on the privacy of a "child" and constitute an unreasonable search.

Section 89373

41. Comment:

Telephone service should include either landline or cell phone.

Recommendation:

Telephone service, ***including either landline or cell phone service***, shall be readily accessible in the home at all times, unless alternative telephone access is approved and documented by the licensing or approval agency using a Documented Alternative Plan (LIC 974) as defined in Section 89201, subsection (d)(5).

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "including either landline or cell phone service" be added to the proposed regulation. This determination is based on the fact that in order to provide the caregiver with flexibility, the proposed regulation would not require a specific type of telephone service, as long as the telephone service meets the intent of the regulation. Telephone service could include landline, cell phone, or Voice Over Internet Protocol (VOIP) service.

Section 89378(a)(1)(D)1.

42. Comment:

1. It is not acceptable that a caregiver have the option, even on an occasional basis, to leave a child alone without adult supervision for up to 24 hours. While it is reasonable for caregivers to be away from the home for brief periods of time for errands, appointments and similar day-to-day activities, state regulations should not jeopardize the safety of the child. This language may have come from the "occasional Short-term Babysitter" language which allows a babysitter, on an occasional basis, to provide care and supervision for the child for no more than 24 hours. (89378 (a) (A) 1.)

Recommendation:

If the caregiver anticipates being absent from the home ~~for no more than 24 hours at a time,~~ on an occasional basis, the caregiver is permitted to leave a "child" alone without adult supervision *but cannot leave the child without adult supervision overnight.*

2. What are the Prudent Parent regulations when the activity is "regular" versus "occasional?" For instance, how would the "occasional" standard be applied for cases when the foster parent judges that the child had the "age, maturity, and developmental level" to be left alone on a "regular" basis, such as every day after school for 2 hours? What is the definition of "occasional?"

Recommendation:

If the caregiver anticipates being absent from the home *on a regular basis relating to a work schedule, for no more than 24 hours at a time, on an occasional basis,* the caregiver is permitted to leave a "child" alone without adult supervision *but cannot leave the child unsupervised overnight.*

Response:

The Department thanks the testifier for this comment. CDSS will adopt, with modification, your recommendation that "for no more than 24 hours at a time on an occasional basis" be replaced by "on a regular basis relating to a work schedule" in the proposed regulation. This determination is based on the health and safety of the "child." Leaving a "child" alone for as much as 24 hours at a time is too long and has inherent risks to their health and safety. This determination is also based on the fact that a caregiver who may find it necessary to arrange for a "child" to be alone on a regular basis would be able to seek a waiver or exception as specified in Section 89224, Exceptions and Waivers. It is also necessary to safeguard against the potential for neglect if a "child" is left alone for an extended number of hours on a repeated and regular basis. The proposed regulations will reflect the removal of "for no more than 24 hours at a time", but will retain "on an occasional basis" in Section 89378(a)(1)(D)1.

CDSS will adopt, with modification, your recommendation that "but cannot leave the 'child' without adult supervision overnight" be added to the proposed regulation. This determination is based on the fact that leaving a "child" alone overnight has inherent

risks to their health and safety. The recommended language, with modification to read "...but shall not leave the child unsupervised overnight" will be reflected in Section 89378(a)(1)(D)1.

Section 89379(a)

43. Comment:

There should be language clarifying that the caregiver may consider reasonable and necessary costs in determining if the "child" can participate in these activities.

Recommendation:

A "child" shall be entitled to participate in age and developmentally appropriate extracurricular, enrichment, and social activities. *The caregiver may consider reasonable and necessary costs when determining if the "child" can participate in these activities.*

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that language be added to the proposed regulations to specify that the caregiver may consider reasonable and necessary costs when determining if a "child" can participate in activities. This determination is based on the necessity to provide a caregiver with broad latitude to permit a "child" to participate in activities. The recommended language could discourage the caregiver from permitting a "child" to participate in activities to which they are reasonably entitled.

Section 89387(d)(1)

44. Comment:

Typical bodies of water in the country include: lakes, rivers, and livestock animal troughs. To avoid any confusion for caregivers, those bodies of water should be included in this section allowing caregivers to apply the Reasonable and Prudent Parent Standard when deciding whether a "child" should have access to similar bodies of water.

Recommendation:

The caregiver shall use the reasonable and prudent parent standard as defined in Welfare and Institutions Code section 362.04, subsection (a)(2) and as specified in Section 89377, Reasonable and Prudent Parent Standard, when deciding whether a "child" should have access to fish ponds, fountains, creeks, *lakes, rivers, livestock animal troughs*, and similar bodies of water.

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation that "lakes, rivers, livestock animal troughs" be added to the proposed regulation. This determination is based on the use of "similar bodies of water" in the proposed regulation to address the bodies of water you mention. Regulations use "similar bodies of water" to alert a caregiver to be aware of all bodies of water at or near the home that may pose a potential hazard.

Section 89387.2(a)

45. Comment:

There should be a distinction between toxic and non-toxic cleaning solutions due to many eco-friendly products being available in today's market.

Recommendation:

Except as specified in subsections (b)(1) through (3), medicines, disinfectants, *toxic* cleaning solutions, poisons, firearms, and other dangerous items shall be stored where inaccessible to a "child." *The addition of toxic should also apply to the definition of "cleaning solutions" in 89387.2(b)(3) and (A).*

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to add "toxic" to the proposed regulation in regard to cleaning solutions. Your concern is already addressed by current regulation regarding dangerous items in Section 89387.2(a), which covers toxic cleaning solutions. The exception specified in the proposed regulation would require a caregiver to use the Reasonable and Prudent Parent Standard to determine whether a "child" should have access to such cleaning solutions. In using the standard, the caregiver should take appropriate steps to assess the toxicity of the specific cleaning solutions in the home. All cleaning solutions have the potential to be toxic or harmful if not handled correctly by a "child," and the caregiver would be required to ensure that a "child" knows how to safely handle and use cleaning solutions in Section 89387.2(b)(3)(A).

Section 89468(b)(1-10)

46. Comment:

The social worker is mandated by law to provide information to the caregiver. This section, while well intentioned, shifts the responsibility of getting information from the social worker to the caregiver. It would be in the best interests of both the caregiver and the child if these questions were placed in the "Handbook" section, along with the next series of questions, as a "good practice" guideline for a foster parent to initiate a conversation with the social worker and ask the appropriate questions that were relevant to the child's age. Placing it in the required "Admissions Procedures" creates

an unnecessary liability for the caregiver and raises questions regarding how would the caregiver document that they asked the questions. If the caregiver cannot document that they asked these questions, they could be cited.

Recommendation:

Place this list of questions in the "Handbook Section." Require the caregiver to ask for the Health and Education Passport, the written plan identifying the specific needs and services of the "child," to ask for the name and age of the "child" and to ask for "any additional information" the social worker may have. If the caregiver does not receive the Health and Education Passport for a "child" and the written plan identifying the specific needs and services of the "child" at the time of placement, the caregiver shall ask the placement social worker the name and age of the "child" and, at a minimum, all of the following Pre-Placement Questionnaire questions:

- (1) Does the "child" have any allergies? (i.e. any medications, peanuts, strawberries, dogs, cats, etc.)
- (2) Does the "child" have a history of infections or contagious diseases?
- (3) Is the "child" taking any prescription medications?
- (4) Does the "child" have physical limitations?
(A) Is any special care needed?
- (5) Does the "child" have any medical conditions I should know about? (i.e. diabetes, epilepsy, etc.)
- (6) Does the "child" have any mental health conditions I should know about? (i.e. schizophrenia, bi-polar disorder, etc.)
- (7) Does the "child" have a history of suicide attempts?
- (8) Does the "child" have any behavioral problems? (i.e. drug abuse, running away, or starting fires, etc.)
- (9) Does the "child" have a history of physical or sexual abuse?
- (10) Does the "child" act out sexually?

Response:

The Department thanks the testifier for this comment. CDSS will not adopt your recommendation to place the Pre-Placement Questionnaire questions from the proposed regulation into handbook. This determination is based on the necessity for a caregiver to have critical information about a "child" at placement in order to provide appropriate care and supervision. This determination is also based on the need to ensure that the caregiver has information necessary to make Reasonable and Prudent Parent decisions in regard to the "child."

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from November 3 through November 18, 2009 was received. The comments received and the Department's responses to those comments follow.

- Donna Newman, Administrator, Safe Harbor Family Services, Inc., submitted the following comment: (Comment #1)

Section 89378(a)(1)(B) and (C)

1. Comment:

First, we applaud DSS's pervasive incorporation of the Reasonable and Prudent Parent philosophy, which will hopefully serve to give children in foster care a more normalizing family experience. Unfortunately, new language has been added under 89378 which places an unnecessarily onerous burden on foster parents and, by extension, foster families as a whole.

With 89378(a)(1)(B), an Alternate Caregiver can take care of the foster child when the caregiver must be absent for longer than 24 hours, but it must be in the caregiver's home. There appears to be no limit on how long the caregiver can be absent so long as anything over 72 hours is pre-approved by the social worker or probation officer.

89378(a)(1)(C), which would enable Respite Care to be provided by another certified parent (i.e., outside the caregiver's home), is limited to 72 hours per session.

There are reasons why a foster child may not be able to accompany the certified parent on a lengthy trip, many of which have nothing to do with either the child or the certified parent. But expecting foster parents to have available an Alternate Caregiver who meets all the requirements AND can suspend their own personal and family obligations to take up residence in the caregiver's home is extremely unrealistic when the certified parent will be gone for an extended period; e.g., traveling across country or even out of the country. On the other hand, a substitute caregiver who is able to keep the child in his/her own home can provide necessary transportation to school, extracurricular activities, visits, etc., without a great deal of inconvenience, especially with back-up from the FFA social worker.

It's really not clear why the 72-hour limit has been applied to the Respite Care regulations, since, barring that constraint, a child from one of our certified homes could be provided substitute care in the home of another of our certified parents. This seems to us the ideal alternate care plan in such scenarios. Regulatory safeguards could be added, including a pre-approval clause like 89378(a)(1)(B)(6) to ensure the FFA stays informed; a requirement that any certified home providing respite care not exceed its licensed capacity; and, for respite care beyond a set length of time (e.g., 7 days), some

kind of "respite plan" that spells out the particulars, including how the FFA will provide the required oversight to the respite home.

Though, technically, there's nothing to prevent an FFA from simply "moving" the child to the other certified home temporarily to avoid noncompliance with the currently proposed regulations, that solution to the respite care impasse seems to undermine the intent of the regulations. To be effective, regulations need to provide safeguards for our foster children without ignoring the day-to-day realities facing the families who open their lives to them.

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulations in regard to the lengths of time that an alternative caregiver or respite caregiver may provide care or where these caregivers may provide care in the caregiver's absence.

- Maria F. Ramiu, Staff Attorney, Youth Law Center, submitted the following comment, (Comment #2)

Section 89468 and LIC 9225 Pre-Placement Questionnaire

2. Comment:

The admission procedures regulation (89468) and the pre-placement questionnaire (LIC 9225) raise a significant concern regarding educational placement information. It is vitally important for the caregiver to have sufficient information to facilitate the child's timely school attendance. While provision of the educational information is a placing agency function that is out of the control of the caregiver, the regulations should be revised to include a prompt for the caregiver to ask about school if the information is not provided. I suggest the following:

1. "Admission Procedures" 89468(b) p. 154

If the caregiver does not receive the Health & Education Passport and the written plan identifying the child's service needs at the time of placement, the caregiver should (for all school age children) ask the placing agency who the educational decisionmaker is, where the child will be going to school, whether the caregiver is responsible for enrolling the child and how transportation funding will be provided if the child is to remain in the school of origin.

2. LIC 9225 - Pre-Placement Questionnaire p. 200 (PDF)

The licensing form pre-placement questionnaire LIC 9225 should be revised to include the above education related questions regarding school placement, enrollment and transportation.

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation or form. However, handbook accompanying the regulation provides additional questions that a caregiver may want to ask to assist him or her in using the reasonable and prudent parent standard in caring for the child. The caregiver is not precluded from asking additional questions about school placement, enrollment, and transportation for a child.

- April Adams, LPM, Kern County, submitted the following comments, (Comments #3 - 17)

General

3. Comment:

The definitions for caregiver, home and a licensed/approved home are not consistently used or clear throughout document. If "caregiver" includes licensees and approved relatives, then regulations requiring administrative actions, civil penalties, citations, etc. must specify "licensee", unless the intent is to begin including all caregivers. Per ACL 09-38, it seems that the definition of "home" should include licensed foster homes and approved relative/NREFM homes that provide care for foster children.

Response:

Thank you for your comment. No further changes are necessary at this time.

Throughout these proposed regulations, the term "licensee" is replaced with "caregiver" and the term "facility" with "home" to support the Department's position of modification to user friendly language. This language was extended throughout the regulations by the Children's Residential Regulations Review Workgroup. This language is also consistent with ASFA terminology.

The Department believes the regulations are clear. Assembly Bill 1695 (Chapter 653, Statutes of 2001), requires California to be in continuous compliance with the federal Adoptions and Safe Families Act (ASFA) of 1997, Public Law 105-89. As required by ASFA, California applies the same core health and safety standards to all foster family homes. The core licensing/approval health and safety standards consist of criminal records clearance, caregiver qualifications, safety of the physical environment, and personal rights. The requirement to meet these standards was implemented in the regulations package ORD #0302-08 and remains unchanged (OAL File Nos. 02-0620-04E, 02-1018-08EE, and 03-0225-06C).

Section 89201(c)(7)

4. Comment:

Page 5 (7) should read: 18 years and placed with ..." NOTE: when specifying a minor's age, and only a number is given, it is awkward and unclear without "years" or "ages". ALSO in (A) & (B) statements "continues to be provided ~~with~~ care and supervision ..."

Response:

Thank you for your comments on the definition outlined in subsections (c)(7) and (c)(7)(A) and (B). These comments are outside the scope of the 15-Day Renotice as no changes were made to the subject definition in reference to a minor's age or the reference to providing care and supervision. The proposed definition is consistent with the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c), the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

Section 89201(c)(11)(A)

5. Comment:

Page 7 (11)(A) "required for a license or home approval."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the referenced language in the subject definition. Further, the subject definition refers to information that an applicant must submit to the licensing agency and thus, applies only to licensed caregivers and not approved caregivers.

Section 89201(e)(1)

6. Comment:

Page 9 (e)(1) continued "who makes licensing or home approval visits ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject definition. Further, the subject definition applies to a Licensing Program Analyst or others who make evaluation visits to licensed homes.

Section 89201(f)(1)(D)

7. Comment:

Page 10 (D) "~~It is~~ This does not include interpreting ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the reference to the interpretation of a monitor pattern and making an intervention based on that interpretation. The existing language is consistent with the "clarity" standard of the APA, section 11349 of the Government Code, subsection (c), the requirements of style pursuant to section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

Section 89201(o)(1)

8. Comment:

Page 16, under definitions 89201(o)(1) defines occasional child care as "no more than 24 hours": needs more clarification for being nonconsecutive days.

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject definition. Further, use of the term "occasional" clarifies that such care would not be permitted to occur on consecutive days.

Section 89201(p)(7)

9. Comment:

Page 17, (7) is confusing; recommend: "means when regulations mandate any service, personnel or other requirement, the caregiver must do so directly or present evidence ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject definition. The subject definition has been existing language and it is the Department's experience that there have been no issues with the clarity of this definition or its implementation in the field.

Section 89201(s)(3)

10. Comment:

Page 18, (s)(3) should read "heterosexual, ~~gay, lesbian,~~ homosexual, or bisexual".

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject definition in reference to "heterosexual, gay, lesbian, or bisexual."

Section 89201(u)(2)(B)(3)

11. Comment:

Page 21, (u)(2)(B)(3) should cite 89324(d) re: notifying LPA within 30 days of moving ...

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject definition in reference to a licensed home that moves to a new location. Further, the suggested change is already addressed in Section 89234, Changes to License.

Handbook under Section 89201(u)(2)(B)(3)(C)

12. Comment:

Page 23 (n)(1) "Any family home ..., that is ~~vendored~~ vendorized by the State ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the referenced handbook language for the subject definition. Further, the reference to the term "vendorized" in Health and Safety Code section 1505(n)(1) may have been in error since the term "vendored" is used in statute.

Section 89218(c)(5)

13. Comment:

Page 38 (5) refers to finger print cards, in contrast to H&SC 1522, which states "all fingerprinting will be automated by 1999," and refers to electronic fingerprint images throughout the regulation. Recommend changing to "Electronic finger print report ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation. Further, pending the Department making any future changes to criminal background check regulations for all residential facilities and homes to reflect "electronic fingerprint images" consistent with Health and Safety Code section 1522, the term "fingerprint cards" continues to be commonly understood for purposes of clarity and consistency.

Section 89219(e)(1)

14. Comment:

Page 43 (e)(1) – "~~Finger prints~~ Copy of application for electronic fingerprinting and identifying ..." (e)(1)(B) "A caregiver's failure to submit fingerprints ... shall result in the citation of ..." Is it the intent to cite and fine relative caregivers? If not, replace "caregiver's" with "licensee's".

Response:

Thank you for your comment on the regulation in subsection (e)(1). This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation.

Thank you for your comment on the regulation in subsection (e)(1)(B). This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation.

Section 89219(g)

15. Comment:

Page 44 (g) requires an exemption for a minor traffic violation w/ fine of \$300 or more.
Is this new?

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation. Further, the subject requirement is not new since it is reflected in existing regulatory language.

Section 89219.1(a)

16. Comment:

Page 47 89219.1(a) "... the Department may grant an ~~exception~~ exemption from disqualification ..." and (a)(4) "... to the Department that he ~~+~~ or she has been rehabilitated ..."

Response:

Thank you for your comment on the regulation in subsection (a). This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation.

Thank you for your comment on the regulation in subsection (a)(4). This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation.

Section 89252(e)

17. Comment:

Page 88 (e) "If the ~~eareregiver~~ licensee disagrees with ..."

Response:

Thank you for your comment. This comment is outside the scope of the 15-Day Renotice as no changes were made to the subject regulation.